TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~429.~~ 150

ISAAC WOOLF, PLAINTIFF IN ERROR,

vs.

CLAUD HAMILTON (COMMONLY CALLED LORD CLAUD HAMILTON), AND JOHN ELLIOTT, TRUSTEES OF THE FIRST AND SECOND DEBENTURE BONDHOLDERS OF THE MAMMOTH COPPEROPOLIS OF UTAH (LIMITED).

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED NOVEMBER 15, 1881.

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IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

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1 In the supreme court of Utah Territory.

ISAAC WOOLF, PL'FF & RESP'D'T,
vs.
LORD CLAUD HAMILTON ET AL., TRUSTEES, def'ts & app'l'ts.
} Appeal from the 3d district.

TRANSCRIPTS.

Filed the 18th day of December, A. D. 1878, in my office.
E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

2 *Complaint.*

Territory of Utah. In the district court, third judicial district.

ISAAC WOOLF, PLAINTIFF,
vs.
THE RIGHT HONORABLE LORD CLAUD Hamilton and John Elliott, esq., trustees for the holders of the first debenture bonds of The Mammoth Copperopolis of Utah (Limited), defendants.

The plaintiff complains of the defendants, and alleges that The Mammoth Copperopolis of Utah (Limited) is, and since the 8th day of December, A. D. 1871, has been, a corporation organized pursuant to the laws of the Kingdom of Great Britain, and the owner of property in the said Territory of Utah.

That on about the 19th day of August, A. D. 1873, the said corporation duly issued to sundr*ed* persons, certain first debenture bonds, and on the day last named duly executed and delivered to the defendants, the said Right Honorable Lord Claud Hamilton and John Elliott, esquire, a deed of mortgage, and did thereby duly constitute and appoint the last-named parties trustees for the holders of the said debentures, and did thereby mortgage and vest in trustees the
3 said property of the said corporation for the purpose of securing the payment of such debentures, and all interest thereon; and the said defendants now are, and since about the 13th day of August, A. D. 1874, have been, in possession of the said property of the said corporation, as trustees for the holders of the said debentures, as aforesaid.

And the plaintiff alleges that on the first day of January, A. D. 1876, the defendants, as trustees as aforesaid, were indebted to the plaintiff on an account for money advanced, paid, laid out, and expended by the plaintiff for the defendants, at the special instance and request of the defendants; that on or about the last-named day an account was stated between the plaintiff and the defendants, and a balance of fourteen hundred twenty and $\frac{60}{100}$ dollars ($1,420.60) was found to be due from the defendants to the plaintiff, which sum the defendants then and there promised to pay; but though payment of the same has been often demanded, yet the defendants have not paid the same nor any part thereof, and the same remains wholly due and unpaid.

And for a second and separate cause of action the plaintiff
4 alleges that, at the special instance and request of the defend-

ants, as trustees as aforesaid, one Charles William Cook performed work and labor for the defendants, as their agent and attorney-in-fact, from the first day of December, A. D. 1875, to the first day of August, 1876, which services were worth, for each and every month the sum of two hundred ($200) dollars, but though payment of the same has been often demanded, yet the defendants have not paid the same, and, excepting the sum of one hundred ($100) dollars which has been paid, the same remains wholly due and unpaid; and the plaintiff, by assignment from the said Charles William Cook, is now the legal holder and owner of the balance, to wit, fifteen hundred dollars ($1,500) of the said claim, and the interest thereon, and the same are wholly due and unpaid.

Wherefore the plaintiff demands judgment against the defendants for two thousand nine hundred and twenty and $\frac{60}{100}$ dollars ($2,920.60), with interest as follows, to wit: On $1,420.60, from January 1st, A. D. 1876; on $200, from the same date; on $200, from February 1st, A. D. 1876; on $200, from March 1st, A. D. 1876; on $200, from April 1st, A. D. 1876; on $200, from May 1st, A. D. 1876; on $200.00, from June 1st, A. D. 1876; and on $100.00, from July 1st, A. D. 1876, besides costs.

JAS. B. McKEAN & SON,
Plaintiff's Attorneys.

5 TERRITORY OF UTAH,
County of Salt Lake, ss:

Isaac Woolf, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

ISAAC WOOLF.

Subscribed and sworn to before me this 25th day of August, A. D. 1876.

C. S. HILL,
Clerk 3d Dist. Court, U. T.,
By W. P. McBRIDE,
Deputy Clerk.

Filed Aug. 25th, 1876.

TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3d judicial district.

ISAAC WOOLF, PLAINTIFF,
vs.
LORD CLAUD HAMILTON & JOHN ELLIOTT, trustees for the holders of the first debenture bonds of the Mammoth Copperopolis of Utah (Limited) defendants.

6 The said defendants, admitting their character and functions as aforesaid, here more fully set forth, in their answer to the

complaint herein, the nature, purpose, and limitations of their said trusts, viz: The said corporation being indebted, in order to raise funds to pay the same, and to provide further capital for working its mine, about the 19th day of October, 1873, borrowed £20,000 for that purpose, and issued its debentures to the lenders, on due proceedings had for that purpose, and at the same time, for the purpose of securing the payment of such debentures (which are known as the first debentures of said corporation), and the interest thereon, by way of mortgage, executed said trust-deed, dated the day and year aforesaid, conditioned for the payment of said borrowed money and interest, according to the tenor and terms of said debentures; and these defendants were appointed by said instrument as trustees for said holders of said indebtedness, to administer said security in the manner therein appointed and prescribed. The said mortgage or trust-deed created a lien, as security, upon certain property then owned by said corporation in Juab County, in said Territory, consisting of a mine, mill, and a furnace, with the land held therewith and appurtenances, and was duly recorded in said last-named county. Said debentures have
7 never been paid, and said lien has never been foreclosed or discharged. These defendants deny that they are now, or have been, since the 13th day of August, 1874, in possession of the property of said corporation, as trustees for the holders of said debentures.

In defense to the first alleged cause of action, stated in said complaint, the defendants, trustees as aforesaid, deny that on the 1st day of January, 1876, they were indebted to said plaintiff on account or otherwise for money advanced or paid or laid out or expended by said plaintiff for these defendants, at the instance or request of these defendants, and deny that, on or about that day, or at any other time, an account was stated between said plaintiff and these defendants, or that a balance of 1,420.60 dollars, or any other sum or balance, was found to be due from them to said plaintiff, and deny that these defendants then or at any other time, promised to pay said sum or balance or any other sum or balance to said plaintiff, and deny that there were ever any dealings between these defendants and said plaintiff, to furnish the basis of any accounting.

In answer to the second alleged cause of action in said complaint stated, these defendants, upon information and belief, deny that at the instance or request of these defendants, as trustees aforesaid, said Charles W. Cook performed work or labor for these defendants as their agent or attorney in fact, from the first day of December, 1875, to the first day of August, 1876, or during any part of that interval, or
8 that these defendants agreed to pay for said alleged services at the end of each and every month, or at any time, the sum of $200, or any other sum.

And for further answer in this behalf, these defendants allege that while said Cook had ample authority from the said corporation in respect to its business, he has had only special and limited authority from these defendants as trustees as aforesaid to transact any business in their behalf, and he was especially limited and precluded from all power and authority to create any liability or charge against these defendants as trustees as aforesaid, and, as one of the conditions of his employment, said Cook expressly undertook, promised, and agreed with these defendants, trustees as aforesaid, that he would, in none of his proceedings, create or make any liability or charge against these defendants as such trustees as aforesaid.

Wherefore these defendants demand judgement for their costs against said plaintiff.

ROSBOROUGH & MERRITT,
Attorneys for Def'ts.

TERRITORY OF UTAH,
Salt Lake County:

Francis Fowler, being duly sworn on behalf of said defendants, declare' that he has heard the foregoing answer read and understands it; and that the same is true of his own knowledge, except as to the matters which are therein stated on defendants' information and belief, and as to those matters he believes it to be true; and said affiant further
9 states that the reason' why this verification is not made by either of said defendants are: 1st, they are both absent from said county & Territory; 2nd, this affiant is at present agent for them in said Territory; and 3rd, this affiant is familiar with the organization and history of said corporation, and formerly had management of its business and property in said Territory, he is personally acquainted with said defendants, and *and* most of said debenture holders, and has computed the correspondence and documents bearing on the merits of this case, and has derived his knowledge, information, and belief from those means.

FRA'S FOWLER.

Subscribed and sworn to before me this 9th day of December, 1876.
C. S. HILL, *Clerk*,
By W. B. HILL,
Deputy Clerk.

Filed Dec. 9, 1876.

Territory of Utah, in the district court, third judicial district.

ISAAC WOOLF, PLAINTIFF,
vs.
THE RIGHT HONORABLE LORD CLAUD HAMILTON and JOHN ELLIOTT, esquire, trustees for the holders of the first debenture bonds of the Mammoth Copperopolis, of Utah (Limited), defendants.

10 *Trial.*

This cause having been regularly called for trial before this court on the 14th day of December, A. D. 1877 (a jury trial having been expressly waived by the respective parties herein), Messrs. Jas. B. McKean & Son, and Jno. R. McBride appeared as counsel for the plaintiff, and Messrs. Rosborough and Merritt appeared of counsel for the defendants.

And the court having heard the evidence for the respective parties, and considered the same, with the argument of counsel thereon, and this cause having been submitted, the court now finds therefrom the following facts and conclusions of law, to wit:

Findings of fact.

I. That the defendants, Lord Claud Hamilton and John Elliott, esquire, were at the date of this accruing of the liabilities sued on in

this action, trustees for the holders of the first debenture bonds issued by the Mammoth Copperopolis of Utah (Limited), and were such trustees at the time of the commencement of this action; that the deed of the property of said corporation the Mammoth Copperopolis of Utah (Limited), was made to said defendants on the 19th day of August, A. D. 1873, and duly filed for record in the recorder's office of Juab County, Utah, on the 27th day of October, A. D. 1873, and afterwards therein duly recorded.

II. That said defendants, as such trustees, afterwards and before the accruing of the said liabilities sued on herein, entered into the possession of the property of said Mammoth Copperopolis of Utah (Limited), under said deed; that said property consisted of a mine, mill for reduction of ores, and other property, real and personal, and that said defendants now own, and ever since the making of said conveyance have owned and held the legal title to said property.

III. That on the first day of January, A. D. 1876, the defendants as such trustees were indebted to the plaintiff on an account there stated between the parties hereto, for divers sums of money therefor advanced, paid, laid out, and expended by the plaintiff for the defendant, as such trustees, at their special instance and request in the sum of fourteen hundred twenty $\frac{60}{100}$ dollars, ($1,420.60); that the said sum is now wholly due, with interest thereon from the last-named day, and no part thereof has been paid.

IV. That before the bringing of this action, said defendants, as such trustees, were indebted to Charles William Cook for services by him rendered them as their agent and attorney in fact, from the first day of December, A. D. 1875, to the first day of August, A. D. 1876, in the sum of fifteen hundred dollars ($1,500) which, sum was due and wholly unpaid; and, before the commencement of this action, the plaintiff, by the assignment from the said Cook, became, and now is, the holder and owner of the said claim of $1,500, which sum, with interest thereon from the 25th day of August, A. D. 1876 (the time of commencement of this action), remains unpaid.

CONCLUSION OF LAW.

That the defendants, as such trustees, are indebted to the plaintiff in the sum of fourteen hundred twenty dollars and sixty cents, ($1,420.60,) with two hundred and seventy-seven dollars and thirty cents, ($277.30), interest thereon; also in the further sum of fifteen hundred dollars, ($1,500), with one hundred and ninety-five dollars and thirty cents ($1,95.30) interest thereon; aggregating the sum of three thousand three hundred and ninety-three dollars and twenty cents ($3,393.20), and it is ordered that judgement be entered accordingly.

Dated Dec. 14th, 1877.

Filed Dec. 17th 1877.

M. SCHAEFFER,
Judge of 3rd District Court.

13 *Judgment on findings.*

In the district court of the 3rd judicial district, Territory of Utah, and county of Salt Lake.

ISAAC WOOLF, PLAINTIFF,
vs.
THE RIGHT HONORABLE LORD CLAUD HAMILTON and JOHN ELLIOTT, esq., trustees for the first debenture bonds of the Mammoth Copperopolis of Utah (Limited), defendants.

This cause coming on regularly for trial at the December term of said court, to wit, on the 14th day of December, 1877, and the same is tried before the court, a trial by jury having been especially waived, Messrs. Jas. B. McKean & Son, and John R. McBride, appeared as counsel for the plaintiff, and Messrs. Rosborough & Merritt appeared as counsel for the defendants, and the court having heard the evidence of the respective parties, and considered the same, with the arguments of counsel, and being now fully advised, and having filed its findings of fact herein, and its conclusions of law thereon, from which it appears that said defendants, as such trustees, are indebted to the plaintiff in

14 the sum of $3,393.20 on the said accounts stated, and the interest thereon to December fourteenth, 1877, A. D. Wherefor' by virtue of the law and by reasons of the findings aforesaid, it is ordered, adjudged, and decreed by the court, that the plaintiff, Isaac Woolf, do have and recover of and from the defendants, the Right Honorable Lord Claud Hamilton, and John Elliott, esq., trustees for the holders of the first debenture bonds of the Mammoth Copperopolis of Utah (Limited), the sum of three thousand three hundred ninety-three and $\frac{20}{100}$ dollars, with interest thereon from December 14th, 1877, at 10% per annum until paid, together with plaintiff's costs and disbursements incurred in this action, amounting to $98.20

Judgment rendered Dec. 17th, A. D. 1877.

Exception to the findings.

TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PLA'FF,
vs.
LORD CLAUD HAMILTON ET AL., TRUSTEES for the holders of the 1st debenture bonds of the Mammoth Copperopolis of Utah (Limited), def'ts.

15 EXCEPTIONS TO THE FINDINGS.

The said defendants, trustees, &c., except, 1st, to the 2nd finding of fact, on the ground that it is not sustained by the evidence, in these particulars, viz: The evidence shows that the $1,420.60 claimed by the plaintiff consisted of old debts of the Mammoth Copperopolis of Utah (Limited), accrued prior to January 1st, 1875. That in the application

of the moneys placed in his hands (whether towards compromising and settling old debts of said company or abortive attempts at mining), Cook, with whom plaintiff dealt, represented the subscribers to the fund intended to be secured by the 2nd debentures of the company, who had chosen trustees in that behalf (from whom Cook had a power of attorney), which is a different trust from that in which the defendants are sought to be charged in this case, and that possession of the property was not taken under the trust-deed of Aug. 19th, 1873, but under the deed from Wadsworth (Exhibit F), which conveyed the legal title, subject to the lien of said trust-deed. The further finding, that since the date of said trust-deed these defendants, as such trustees, have owned and held, and now own and hold, the legal title to the property therein mentioned, is not the statement of a fact, but of matters
16 of law, and is against law, because there could be no right of possession in defendants as such trustees, nor of their cestuis qui trust, without foreclosure and sale under said trust mortgage.

2nd, to the 3rd finding, because there was no evidence to show that there had been any dealings between plaintiff and defendants as trustees for the first debenture holders, to make a predicate for an account stated; nor that plaintiff had laid out, advanced, or paid any money for the use or benefit of said trust, nor that any precise sum or balance was ever agreed upon between Cook & plaintiff till July 15th, 1876 (when Cook had ceased to be an agent for any purpose), up to which time interest was computed by them to make up said sum of $1,420.60; and the evidence shows that this claim is made up entirely of *of* debts of the said company bought up by the plaintiff with money advanced to him by Cook out of funds of said other trust, and while his expenses of travelling were paid out of the same fund, which debts were in no way chargeable to the first debenture holders and could not be made so by any act or contract of Cook or the trustees themselves.

3rd, to the 4th finding, because the evidence failed to show that Cook rendered any services whatever for the use or benefit of the beneficiaries of the trust created by the trust-deed, or trust mortgage of Aug.
19, 1873, but the evidence does show that Cook was provided
17 with funds from a different source, under a separate and distinct trust, to compromise and settle the debts of the old company and to mine with any balance; that Cook assumed to make a lease, which was denied by the company, and a different arrangement made with Clohesy, who reported directly to London; and that the services for which Cook claimed a salary were not for settling said debts, nor for mining, and in no way concerned or benefitted the trust for the 1st debentures.

And defendants except to the decision and conclusion of law found, that they, in their said fiduciary capacity, are indebted to said plaintiff in the sums of money and interest stated, because neither said Cook, as agent, nor these defendants as trustees for the 1st debenture holders, had any power or authority to burden such trust with plaintiff's claims, and the attempt to do so is a gross breach of trust.

Filed March 8th, 1878.

ROSBOROUGH & MERRITT,
Att'ys for Def'ts.

18 TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3d judicial district.

ISAAC WOOLF, PL'T'FF,
vs.
THE RIGHT HON. LORD CLAUD HAMILTON & John Elliott, esq'r, trustees of the holders of the 1st debenture bonds of the Mammoth Copperopolis of Utah (Limited), def'ts.

Statement on appeal.

This cause was tried before the court on the 14th December, 1877, and the court, on the 17th day of December, 1877, made and filed its findings, and entered judgment thereon for plaintiff. The time, therefore, having been extended by agreement of the parties, and by order of the court, until after the 8th day of March, 1878, the defendants, on the date last aforesaid, filed and served their notice of intention and motion for a new trial, a statement on such motion and written exceptions to the findings of the court. The statement was agreed to. On the 7th September, 1878, said motion for a new trial was submitted to the court on said notice, and statement and argument of councel of the respective parties, and the court, on the 12th September, 1878, denied said motion; to which ruling and order the defendants then and
19 there duly excepted. Said order is in the following words:

Third district court, Utah Territory.

ISAAC WOOLF
vs.
CLAUD HAMILTON ET AL.

Motion for a new trial.

This motion having been argued and submitted to the court on the 7th of September inst., and the court having duly considered the same, and being now fully advised, doth now overrule said motion; to which the defendants, by their attorneys, duly except. And the court assigns as a reason for overruling said motion that, in the opinion of the court, there is no error in the proceedings herein as alleged.

By the court, Sept. 12th, 1878.

M. SCHAEFFER, *Judge.*

Filed Sept. 12th, 1878.

In the course of the trial of the cause the following proceedings, objections, and exceptions were had and taken, viz:

1st. The defendants, by their attorneys, at the time, duly excepted to the admission of the evidence of the witness Cook, as to a statement of accounts between him and the plaintiff, on the grounds stated
20 in the reporter's notes of the trial, embodied in the statement on motion for a new trial.

2nd. The defendants, by their attorneys, at the time, duly excepted to the admission of the letter marked Exhibit 5, on the grounds stated in the reporter's notes of the trial, embodied in the statement on motion for a new trial.

The defendants embrace in and make part of this statement an appeal.

1st. The said notice and motion for a new trial on file.

2nd. Said certified statement on motion for a new trial on file containing all the evidence given on the trial, viz. the testimony of Chas. W. Cook, plaintiff, Isaac Woolf, and Thomas E. Clohecy, and Exhibits 1, 2, 3, 4, and 5, on the part of plaintiff, and Exhibits A, B, C, D, E, & F, on the part of defendants, with the objections and exceptions of defendants to the admission of testimony as noted by the reporter in his report of the testimony and proceedings; also defendants' specifications of grounds for their motion for a new trial.

3d. Defendants' exceptions to the findings of the court on file in this cause.

4th. The said several orders of the court, viz, order denying defendants' motion for a new trial; orders extending the time for serving and filing notice, and motion and statement for a new trial, and exceptions to the findings and statement on appeal.

Hereupon the defendants assign and specify the particular errors or grounds upon which they intend to rely on their appeal from the judgment and order denying their motion for a new trial, as follows:

21 1st. The court erred in allowing the witness Cook to testify, against the objection of the defendants, to the alleged account stated, because he had no authority to state an account to bind the trust; neither had the trustees; and there had been no previous transactions between; and the trustees, acting within the scope of their trust, to constitute a predicate for an account stated, and there was no promise in writing to answer for the debt of another.

2nd. The court erred in admitting in evidence, against the objection of the defendants, Exhibit 5, because the same was a transaction between other parties, not by or on behalf of the defendants as trustees, and was irrelevant and did not tend to show a ratification of Cook's acts by them as trustees, and also because there was neither power to make or ratify such acts.

3d. The court erred in its 2nd, 3d, & 4th findings of fact, because the evidence was insufficient to justify the same, and they are against the evidence.

4th. The court erred in its several conclusions of law: 1st, that the trust-deed or mortgage conveyed the legal title to the mortgaged property to defendants, and that they now hold the legal title thereto; & 2nd, that the defendants, in their fiduciary capacity, are indebted to the plaintiff.

22 5th. The court in giving judgment for the plaintiff, and in not rendering judgment for defendants.

6th. The court erred in denying defendants' motion for a new trial.

The defendants having filed and served their proposed statement on appeal, on the 30th October, 1878, and the plaintiff having filed and served his proposed amendments thereto, on November 2nd, 1878, and the same having been submitted to me for settlement on the 4th November inst., the foregoing is settled and adopted as the statement on appeal, and I hereby certify that the same has been allowed and is correct.

Given under my hand this the 6th day of November, 1878.

M. SCHAEFFER,
Judge 3rd Dist. Court, Utah.

Filed November 6, 1878.

23 TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PL'T'FF,
vs.
LORD CLAUD HAMILTON & JOHN ELLIOTT, trustees for the holders of the first debenture bonds of the Mammoth Copperopolis of Utah (Limited), def'ts.

The said plaintiff will take notice that said defendants intend to move said court to vacate the findings and judgment heretofore made & entered in said cause, and to grant a new trial therein on the following grounds, viz:

1st. Insufficiency of the evidence to justify the findings and judgment, and that the same is against law; & 2nd, errors in law occurring at the trial, and excepted to by defendants.

ROSEBOROUG & MERRITT,
Att'ys for Def'ts.

To said plaintiff & J. B. MCKEAN & SON, Esqs.,
Att'ys for Pl'ff.

Service of copy admitted M'ch 8, 1878.
JAS. B. MCKEAN & SON,
Pl'ff's Att'ys.

Filed M'ch 8, 1878.

TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PL'T'FF,
vs.
LORD CLAUD HAMILTON & JOHN ELLIOTT, trustees for the holders of the first debenture bond' of the Mammoth Copperopolis of Utah (Limited), def'ts.

24 Now come said defendants and move the court to vacate the findings and judgment heretofore made and entered herein, and to grant a new trial on the following grounds, viz:

1st. Insufficiency of the evidence to justify the findings and judgment, and because the same is against law; & 2nd, errors in law occurring at the trial and excepted to by defendants.

ROSEBOROUGH & MERRITT,
Att'ys for Def'ts.

Filed M'ch 8, 1878.

25 *Copy.*

TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PL'FF,
vs.
LORD CLAUD HAMILTON & JOHN ELLIOTT, trustees, for the holders of the first debenture bonds of the Mammoth Copperopolis, Utah, Limited, def'ts.

Statement on motion for a new trial.

A jury having been waived by the parties, this cause was tried before the court on the 14th day of December, 1877, and submitted on the pleadings, proofs, and exhibits of the respective parties, and taken under advisement; and afterwards, on the seventeenth day of December, 1877, the court made and filed its findings. No written notice of the decision or filing of such findings has been served on the defendants, but by stipulation of the parties and order of the court here referred to and made part hereof. The period of time allowed by statute for serving and filing notice of intention to move for a new trial, motion and statement thereon for a new trial and exceptions to the findings were extended until the 17th day of March, 1878.

Statement of evidence.

The following statement, including a full phonographic report taken by the reporter at trial, with his statement of objections and exceptions of the defendants on the production of evidence which are made a part hereof, embraces all the evidence, oral as well as documentary, adduced on the trial.

26 In the district court for the third judicial district, Territory of Utah.

ISAAC WOOLF
vs.
LORD CLAUD HAMILTON ET AL.

This case coming on for hearing on the 14th day of December, 1877, before the court, the plaintiff appearing by James B. McKean and John R. McBride, his attorneys, and the defendants appearing by Roseburugh & Merritt, their attorneys, the following proceedings were had and the following testimony introduced:

Judge McKean reads complaint.

Col. Merritt reads answer.

Complaint amended by inserting the words constituting a quantum meruit, and the plaintiff consents that it may be considered traversed by defendant.

Plaintiff offers in evidence attested copy of mortgage deed mentioned in complaint and admitted in the answer from the Mammoth Copperopolis, of Utah, Limited, to Lord Claud Hamilton and John Elliott.

(Objected to, as the copy cannot be introduced in evidence.)

By Judge ROSBUOUGH. The original is at your service.

Original considered in evidence—deed dated 19th of August, 1873.

Plaintiff offers in evidence power of attorney dated 13th of August, 1874, from the defendants as trustees of the first debentures to Charles William Cook, marked Exhibit 1.

Also another power of attorney of the same date from the trustees of the second debenture fund to Charles William Cook, marked "2."

27 Also, another power of attorney, of the same date, from the Mammoth Copperopolis of Utah, Limited, to Charles William Cook, marked "3."

CHARLES WILLIAM COOK sworn for plaintiff.

Q. Are you the same Mr. Cook mentioned in these powers of attorney that have been produced in evidence?

I am.

Q. Were those instruments delivered to you and accepted by you?

Certainly.

Q. By whom, and when?

They were delivered to me by Lord Claud Hamilton and John Elliott.

Q. The first one?

That was delivered to me by Lord Claud Hamilton and John Elliott, and Maurice Keene and Mr. A. F. Sheppard, the solicitors for the trustees and the company.

Q. Was it on the day of the date of the instrument?

That I could not say, but within a day or two; I left England on the the 17th of August. It was delivered on or about that date.

Q. Look at this one—No. 2.

That was delivered to me by the same parties. Lord Claud Hamilton, John Elliott, Maurice Keene, and A. F. Sheppard, as the solicitors, at the same time.

Q. Look at No. 3?

That was delivered to me by Mr. Henry M. Spratt and Maurice Keene, in the presence of Mr. Sheppard and John A. Black, his clerk, at the same time.

Q. What did they represent or whom did they represent?

They represented the Mammoth Copperopolis of Utah, Limited; they were directors.

Q. Did you, in pursuance of those proceedings, come to the United States and Utah?

Yes, sir.

28 Q. When did you come to Utah.

I left London on the 17th of August, '74, and arrived here on the 7th of September of the same year.

Q. What, if anything, did you proceed to do.

Upon my arrival I proceeded to investigate the financial condition at that time. That is as to the liabilities of the original Mammoth Copperopolis of Utah, Limited, Company, with a view to compromise or making arrangements for a compromise on behalf of the first debenture holders, through trustees Lord Claud Hamilton and John Elliott.

Q. What, if anything, did you do with reference to taking possession of the property for these defendants?

At that time I could do nothing, but subsequently I did get or obtain control of the debts, as it were; that is, by partial payment and arrangements for future payments I obtained and took possession of the property for the trustees of the first debenture holders?

Q. About what time was that?

About the 4th of August, '75.

Q. How long did you have possession of the property for the trustees?

I suppose the answer would be until I gave a lease—until I granted a lease on behalf of the trustees—because I could not have possession after the lease was granted?

Q. About what time.

I forget whether it was October or November.

Q. Of which year?

Of the year '75.

Q. To whom did you then lease it?

I granted a lease to Thomas E. Clobecy.

Q. Up to what time did you continue to act for the defendants?

29 I continued to act after that up to the time when I received a letter informing me that my powers were suspended. After a cablegram—the cablegram arrived in July, '76—informing me that my powers were temporarily suspended and satisfactory explanation would follow. I waited the arrival of that letter. In that letter they told me my powers were temporarily suspended. They hoped I particularly observed that fact. Of course, then, I relinquished.

Q. What day in July do you fix?

22nd or 23rd, I think the cablegram arrived. I am not sure as to the exact date.

Q. Then from the time of your arrival here to that date you acted under these powers of attorney for the defendants?

Undoubtedly.

Q. You mean to say that you did?

Certainly.

Q. What, if any, agreement did you have with the defendants in regard to your compensation?

There was no agreement as to price stated, or amount stated; but they wrote me asking me what my services would be worth, and I wrote them informing them that $200 a month I should consider would be a proper sum. They replied to that letter, stating that of course the trustees and directors—all of them together——

(Objected to. If there is a letter, it must be produced.)

Q. Have you that letter?

It was placed in evidence the other day—taken by the court.

Q. What were your services worth per month?

I considered they were worth $200 a month at the very least. I merely made that amount because I did not——

30 By Judge ROSBOROUGH. Do you confine it to the time mentioned in the complaint?

By Judge MCKEAN, for plaintiff. Yes, sir; from the first day of '75 to the first day of August, '76.

Q. What, if anything, has been paid you by the defendants?

$100.

Q. Anything more?

Nothing more.

Q. As agents for the defendants, what, if any business transactions have you had with the plaintiff, Mr. Woolf?

Upon my arrival here in the first instance, I had, of course, to investigate and ascertain, as far as possible, the amount of the liabilities, and to do that it was necessary to ascertain also where the time-checks of the different men that had been employed at the mill and mine, &c., were—into whose hands they had got, because the miners had been

obliged to be supplied with different things, and merchants and different people had accepted these time-checks and vouchers as payment for goods and for merchandise, and it appeared that Mr. Woolf had the largest business in Tintic with the mining population, and he had already taken a great many vouchers in payment for goods. Upon that I saw him and asked him if he could assist me in obtaining possession of all those time-checks, &c. He said he had certainly so much in hand that he certainly could; that he had greater facilities for that than anybody else in the city. He already was aware of the basis of this arrangement from Mr. Clohecy having come out originally. Upon that I agreed with him that he should obtain all that he could, for which I would give him thirty per cent. in cash, and the other
31 20 per cent. should be left in abeyance until I received more money from England to pay him. Those funds did not arrive. He said, "I will wait." He waited and never got it, because it never came. On the other side they had actually promised me that they would send 6,000 pounds sterling.

Q. You mean the defendants?

Yes, sir. They promised they would send me 6,000 pounds sterling. That was the amount I calculated upon. They sent me 500 pounds there, which would be two or three thousand dollars at that time, and the consequence was I failed in funds and could not pay Mr. Woolf.

Q. Then I understand you that Mr. Woolf, in pursuance of this arrangement, proceeded and paid items of indebtedness of the company and took the vouchers?

He undoubtedly went and bought these papers.

Q. You say undoubtedly. You know that he did?

Yes, sir.

Q. He paid for these checks and proceeded to do so for some months?

He proceeded to do so until I stopped him—until I said it was no use to do so any more. The cablegram came, stating my powers were suspended. I then told him it was no use to go on. He said, "Well, then, I say so."

Q. Did you and the plaintiff at any time have an accounting—you for the defendants, of course—have an accounting and ascertain the amount of indebtedness of the defendants to the plaintiff?

(Objected to by defendant to raise the question of authority. The defendants are sued as trustees, and we deny the authority of the trustees to do that themselves or to give the power to bind the
32 cestuis que trust. If they are bound at all in this transaction it must be in their representative capacity. I deny that they had the authority to do that, or that they should give Mr. Cook authority to do it.)

By the COURT: We will take the testimony now subject to further evidence on that point.

Last question read.

Ans. Yes.

Q. When was this?

Immediately upon the suspension of my powers in July.

Q. I am speaking now not of the information you gave to the plaintiff at that time about your suspension, but the previous examination of his claim; the accounts of his claim against the company.

I did examine them from time to time all the way from '74. The first arrangement with Mr. Woolf was on the 4th of November, '74. That was the first arrangement; the arrangement continued. It was an open arrangement by which he bought paper as fast as he could.

Q. As to this accounting; when was it that you and the plaintiff went through with an examination of these demands and ascertained the amount that was due to the plaintiff, as alleged, from the defendants?

Some time immediately upon the suspension of my powers in July.

Q. In regard to the allegation which was made on your information, that on or about the first day of January, 1876——

That amount was due.

Q. Did you then have an accounting?

33 Not at that moment. It had been done gradually from time to time; it was not done on any particular day.

Q. When was it you found the amount due to the plaintiff as alleged if at all?

In July, immediately upon the suspension of my powers. Then it was necessary to go through all the papers because Mr. Woolf stated, and I saw that then I had to go through the whole papers to see what he was entitled to.

Q. Had you examined them before from time to time?

Certainly I had.

Q. Did you examine and ascertain how much was due to the plaintiff by the defendants, on or about the first day of January, 1876?

(Objected to by defendants, as there is an allegation of an accounting at a particular day, and when a party alleges an accounting on a particular day, he must rest upon that day; and the witness had already stated he had no accounting then, that it was in July immediately after his powers were suspended.)

Q. How is that?

I will explain it to you, perhaps, in my own language. This accounting was a running account between Mr. Woolf and myself, and he obtained the paper from time to time, and as he obtained it he brought it to me, and I examined it, finding there was about a certain

34 amount due to him. I didn't know, perhaps, to a few dollars, because it was only about the amount, but on the first day of January, on which the date is stated there—about that time, it might have been a day or two after—up to that time he had received certain numbers of vouchers, which amounted to a certain specified sum; that sum, I of course, went through, and made him out an account, stating that such an amount was due to him.

Q. Did you then, about that time, ascertain the amount that was due to him?

It was about $1,400; of course I could not say, it might be 1,350 or 1,450, because it was only a general statement, general idea.

Q. About the first day of January, 1876, it was found that about 1,400 dollars was then due?

Yes; that is right.

Q. And that was so stated between the parties?

That was so stated by me to him.

(Objected to.)

Q. Did you make that in writing?

No; not that day, because I still held my powers of attorney. My powers were all correct then. From that time Mr. Woolf, of course, was waiting for his money, and I told him that he could buy some up, if he liked. That was after the first day of January, Mr. Woolf

35 said every day or two, from time to time, Have you got any money for me? I said, No, I have not. He said: "You don't expect me to buy up if you have no money to pay me what I have already got." I said, "I have no money, I cannot pay you. You must please yourself."

As soon as my powers were suspended, then it was my duty go to him and inform him of that fact. He then said, "Oh, then all right, I shall sue. Let's have the papers out, and make up my account upon them." I went through them carefully.

Q. Then he had bought some of those demands after the 1st day of January, '76?

I think not. I examined it on purpose to see, and to see what the exact amount was.

Q. It was ascertained, by examination, about the 1st of January, 1876, that about 1,400 dollars was due from the defendants to the plaintiff?

(Objected to by defendants as leading.)

Q. Restate then what was found, if anything, to be due?

(Question withdrawn.)

Q. Have you computed the interest upon the demands made upon this case?

Yes.

Q. Please state what you found the interest to be?

(Defendants object to that mode of proving interest.)

By the COURT: It is a matter of calculation.

Q. How did you compute the interest, on what sum; and how?

Computed the interest at ten per cent. per annum.

Q. On what demand?

On $1,420.60 first, and then at the rate of ten per cent. per annum for the $200 per month from January 1st.

36 Q. You say $1,420.60. Now your testimony is that it was about 1,400 dollars?

Yes.

Q. Will you compute the interest on 1,400 dollars from the first day of January, 1876?

(Objected to, as interest is rather a conclusion from facts; the court will take judicial notice of the almanack and rules of arithmetic. If the plaintiff is entitled to recover, the proof must show that, and when the interest begins, and then it is a matter of calculation for the court. If the plaintiff is entitled to recover he must fix the sum and fix the date from which interest is to be computed by the court. The interest is a mere calculation, you can leave that out.)

Q. Did you not state when you took possession of the property?

Yes, sir; the 4th of August, '75.

Cross-examined by Judge ROSBOROUGH:

Q. You brought three powers of attorney with you to Utah?

Yes, sir.

Q. In the power of attorney from Hamilton and Elliott, trustees, there are certain instructions mentioned. Did you bring them to this Territory with you?

I did.

Q. Did you exhibit those powers of attorney and instructions to any parties that you dealt with?

I don't know that I made a specialty of showing them to anybody or giving them to anybody.

Q. I didn't ask you if you made a specialty of it. I asked you if you exhibited those powers of attorney and instructions to any parties that you dealt with?

I certainly showed the powers of attorney to Mr. Clohecy.

Q. Did you show them to Mr. Woolf?

37 I really don't know whether I did or not. I think probably I did.

Q. Look at the document handed you and state whether that document, with the printed circular annexed, were the instructions referred to in that power of attorney.

Certainly they were.

Q. Did you have the instructions with you? Did you bring them, or a copy of them, with you to Utah?

Yes, sir. Marked Exhibit 4 for def'ts.

Q. Did you have any correspondence with the trustees, or either of them, about your powers, duties, and proceedings before you left England?

Yes, sir.

Q. Which one?

You have them in your hand.

Q. You are asked the question, which trustee?

Lord Claud Hamilton. There is a letter from Lord Claud Hamilton to me and a letter from myself and a letter from Lord Claud Hamilton and John Elliott.

Q. Look at the paper writings marked 2, 3, and 4, and state who wrote the several letters.

Lord Hamilton wrote that one, No. 2, and No. 3 & 4 are both written by myself.

Q. Were they in answer to the letter of Hamilton?

No. 3 is a reply to Lord Claud Hamilton's letter, dated the 14th of August, and previous to that is my other letter. My other letter was written on the 13th of August to the trustees. No. 4, that is written to both of them.

Q. You state you took possession of the property on the 4th of August, '75. Why had you not taken possession of it before?

In consequence of delays in getting certain arrangements completed.

38 Q. How much money was sent to you and put in your hands altogether?

5,500 pounds.

Q. Did you get 500 or 600 dollars for quicksilver afterwards?

I don't know; about 5 or 600 dollars.

Q. Tell us how much it was?

I don't think it was as much as that. I don't remember what the amount was.

Q. Did you sell personal property?

Yes.

Q. About how much quicksilver and personal property?

Don't remember, but the statement was forwarded to London.

Q. From what source was that 5,500 pounds derived?

Derived from subscriptions obtained in London from the members of the first debenture bondholders; the first debenture bonds, to the best of my belief.

Q. Do you know the fact that all of them held debentures?

At the time I left London they did.

Q. Do you know whether they contributed money afterwards?

I was informed so. I could not say. It was contributed in order to pay off the existing liabilities; to pay the debts of the old company in order to obtain possession of the property and work it.

Q. Ask you if the conditions and purposes of that are not explained in the printed circular annexed to your instructions?

That is the circular that was sent out with a view of obtaining the sum of money by subscription in order to eventually issue debenture bonds, if they could; but at that time, when I left London, the amount was subscribed entirely by the holders of the first mortgage.

39 Q. Ask you if that fund was not raised under the proposition of this circular?

The circular was sent out, but as to whether it was actually raised under that I could not say. I know that men subscribed money who had first debenture bonds.

Q. What was the designation of that fund?

A fund subscribed for the purpose of paying off the existing liabilities and with a view to having a second debenture or having a second mortgage on the property.

Q. Ask you if that fund was not placed in the hands of the trustees, the defendants in this case, for distribution or application?

Certainly it was.

Q. Ask you if you did have a power of attorney from Lord Claud Hamilton and John Elliott as trustees for those individual subscribers?

Certainly I had.

Q. Ask you what application was made of that fund?

It was applied to paying off the existing liabilities here, as far as it would go.

Q. Did you not report to the trustees that you could retire or extinguish all the debts of the Mammoth Copperopolis Company except Wells, Fargo's claim with the funds you had in hand?

I think not.

Q. Were you not directed to make no payment or distribution unless it was under a general plan to retire all the debts with that fund?

Certainly; neither did I.

Q. What obstacles did you find to taking possession of the property when you came here?

The obstacles were the liens on the property, mechanics' liens, judgments, a sale of Wells, Fargo's and judgment liens.

Q. Did the liens prevent your taking possession?

Certainly.

40 Q. What obstacles did they present to your taking possession?

I was instructed to purchase those liens and get the title.

Q. Ask you if your reason was not that Wells, Fargo had sold the property and got a deed for it?

They had sold the property. I don't know whether they had a deed for it or not.

Q. You don't know whether they had a deed for it or not at that time?

I don't know.

Q. Did they have before August, 1875, a deed for that property?

I think Mr. Wadsworth informed me that they hadn't obtained a deed until I was about to make arrangements to obtain it for the guarrantors. I think they only obtained their deed then.

Q. Ask you if that property was not in the hands of an officer under the attachment of Wells, Fargo when you came out here?

That I can scarcely answer. I don't know whether the officer under the attachment was in legal possession or whether the miners. There

was a trouble between Wells, Fargo and the miners who had liens on the property as to who should hold the property.

Q. Did you learn that Wells, Fargo had a deed predicated upon a judgment and a sale of the property?

They had a judgment and sold the property soon after my arrival.

Q. Did you not know that they obtained a sheriff's deed, or their agent did?

I don't think they did.

Q. Never obtained a sheriff's deed?

Oh, yes; he obtained it afterwards when it was necessary to
41 enter into negotiations relative to the guarantee fund.

Q. Did they not obtain a deed before you entered into the possession of that property?

Certainly.

Q. In whose name?

I don't remember.

Q. Do you not know it was Henry Wadsworth, Wells, Fargo's agent?

I am not sure whether it was him or Wells, Fargo & Company.

Q. Did you pay any portion of that 5,500 pounds to Wells, Fargo or to Wells, Fargo's agent, to obtain possession of that property?

Certainly I did.

Q. When?

At different periods—at two different times.

Q. How much?

2,500 dollars at one time and 2,500 dollars at another.

Q. Ask how the balance of that purchase-money to obtain that deed was provided for?

Provided for by a guarantee fund in London.

Q. By whom?

I don't know by whom, any more than I was informed that Lord Claud Hamilton and John Elliott and Valentine did.

Q. After that payment did you not receive a deed for that property to the defendants, Lord Claud Hamilton and John Elliott, for themselves and their coguarrantors?

Yes, I did.

Q. Did that remove the obstacle to your getting or taking possession of the property?

To a certain extent it did.

Q. To what extent?

To the extent that I have just informed you. After I got rid of the judgments and liens on the property, I went to him and told him
42 and stated what the facts were, and he said, "Now you must settle with us." He says "We must obtain something." He said he should fight the mortgage or fight anything if I went to take possession; for that reason it was necessary to get rid of it.

Q. What obstacle was in the way of your taking possession of the property after this arrangement was made with Wells, Fargo's agent for the property?

There was no particular obstacle which existed. R. T. Smith was then Wells, Fargo's agent, and he stood out for a little while relative to it.

Q. Had you ever seen him before you made your arrangement with Wells, Fargo?

I had seen him several times.

Q. Had you ever any dealings with him before you settled with Wells, Fargo?

No.

Q. You said there were liens on the property that were obstacles. What lien or claim besides Wells, Fargo's?

There were mechanics' liens and judgments of merchants here.

Q. Do you know whether there was any recorded in that county?

Certainly not.

Q. Do you know whether those judgments obtained here were recorded there?

No, sir; I don't know.

Q. You considered the mere obtaining them would prevent you from obtaining the property?

Yes, sir.

Q. How is it you regarded that as an obstacle after you bought the title from Wells, Fargo's agent?

43 I don't think there was any obstacle, only it would be some little trouble. Mr. R. T. Smith was then the agent of Wells, Fargo. He was holding the property—the personal property particularly, was under his care, and he had opportunities and would make trouble if I did not make some arrangement with him.

Q. You stated that you continued in possession, then, until you made the lease to Clohecy?

I did.

Q. Ask you if you haven't made a lease prior to that to Bamberger?

Yes, sir.

Q. Was he lessee?

Nominally only.

Q. Why nominally?

In order to let him go down and work the property for me, or rather for the trustees as their agent.

Q. To work it for the trustees?

It was for the trustees.

Q. Why did you have a lease, instead of working it openly?

Because R. T. Smith threatened me with proceedings at that time.

Q. I thought you had settled that?

I had not settled with him.

Q. How long afterwards did you settle with him?

I forget; it was from the time of the transfer of the property to the guarrantors up to the 4th of August. I went down some time in July—I think, the twenty-second or 23d of July—*I*, just as I explained to you before, and when I got down Mr. Smith failed in his

44 engagement to have a horse or anything there. I tried, and endeavored to get something to go over, but there was nothing there to go over. R. T. Smith was absent on purpose, I found out afterwards, in order to throw me off, if possible.

Q. Osk you to state the date of the revocation of your powers.

I don't remember the exact date in July—the 23rd, I think it was. It was the 23d of June, 1876. That is the date of the cablegram.

Q. Ask you to refresh your memory and state positively the date of the cablegram

The 23rd of June.

Q. On the 23d of June the cablegram arrived?

Yes, sir. "All your legal powers temporarily suspended. Satisfactory explanation follows."

Q. Ask you if you' powers were ever restored? if so, produce the document.

They were not restored.

Q. You have stated, I believe, that you went, on the receipt of this, and informed Mr. Woolf of the fact?

Yes.

Q. At what time did you inform him?

I presume it was within a day or two after this.

Q. Within a day or two after the 23rd of June?

Yes, sir. But then I waited the arrival of the letter. I don't know whether I informed Mr. Woolf immediately on the receipt of this;
45 I think I only informed one or two; I think I informed Col. Kahn and waited for the arrival of my letter.

Q. Ask why it was that you afterwards had the statement or accounting with Mr. Woolf?

Because Mr. Woolf said he should sue, and he wanted to know what the exact amount was.

Q. The exact amount was not ascertained prior to that time?

The exact amount as far as a few dollars and cents go, was not ascertained.

Q. You never had an accounting to ascertain the balance then until in July?

Yes; I had a statement with him in January; I had a statement with him of what he had obtained up to the first of January, '76; we didn't consider it necessary then to make any written memorandum.

Q. If there was an ascertained balance then, and he had made nothing afterwards, why was it necessary to have any statement?

In order to see whether he had obtained any more or not. He handed me in all the vouchers.

Q. Did you make a stated account at that time?

We made a stated account verbally, that was all; there was no writing.

Q. Ask you if you did not make a written statement of account?

No; not in January.

Q. Have you ever made a written statement of account with Woolf?

Yes; in July.

46 Q. Didn't you just now say you hadn't made one?

I said I didn't in January.

Q. What time in July did you make it?

I think on the 25th of July.

Q. Have you got that time with you?

I have not.

By Judge ROSBOROUGH: We give notice to the plaintiff in this case to produce that paper.

Q. Was there any accounting in January?

There was an accounting in January, verbally.

Q. Was there an exact balance stated and struck in January?

There was not an exact balance; it was about 1,400 dollars.

Q. Ask you if you did anything more than to look at the vouchers he had there transferred?

Yes, I did; I took them one by one, every voucher, and every coal, check, and time-check.

Q. Did you foot them up?

I did.

Q. How much did they amount to?

About 1,400 dollars, I told you.

Q. You made no statement there?
No.
Q. But Mr. Woolf sat by?
Mr. Woolf was present.
Q. Did he foot them up, too?
I really don't know whether he did or not; he was with me; I presume he did it first.
Q. There was no agreement about that?
No, sir; there was no agreement.
Q. That was for your own information?
Just for both—our information.
Q. What did you do with those figures?
47 I don't know, probably I may have them—very likely I have—it was a sort of rough entry.
By Judge ROSBOROUGH: We ask to have that stated account produced now.
Q. At whose instance was this accounting made in July, 1875?
It was July, 1876. At the instance of myself, then.
Q. Did you go to Woolf, or he come to you?
I think I went to Mr. Woolf, first; I am not quite sure. I went to him immediately upon the receipt of my letter, I believe.
Q. You are certain you made no statement of account in January, between you and Mr. Woolf?
Not in writing.
Q. Ask why it was necessary to make a statement with Mr. Woolf, if it was not to ascertain the exact amount that was due, that this statement was made in July, '76?
It was necessary——
Q. Why?
In order to see exactly what amount he should sue for. He didn't want to sue for 1,400 if it was 1,450.
Q. Then you came down to an agreement and reduced that to writing in July, '76; of the balance due?
Yes, sir; as to the balance that was due, but the amounts had been running on for two years.
Q. Ask you if that is the document (handing witness a paper)?
Yes; that is the document I signed.
48 Q. When was that paper written?
That paper was written on the 15th of July; that was the date that I wrote my portion of it.
Q. At that time you had informed Mr. Woolf of the suspension of your powers?
About that time I think it was.
Q. Didn't you, before you signed the paper?
Certainly I did.
Q. When was the other part of the paper written?
I don't know; that is not in my handwriting.
Q. You say you had made an arrangement with Mr. Woolf about buying up these checks. What was that arrangement?
That arrangement was to pay him 30 per cent. cash, and 20 per cent. at some other time. He was to be paid whenever it came; he was to buy at whatever he could, and was to buy just as much as he could.
Q. Was that the proposition without reference to what he had in hand, or for future reference?
To what he had and what he could obtain.
Q. Did you have him in your employment?

I consider so.

Q. Did you furnish him with any money?

I did; 600 dollars and 125 dollars. 600 dollars on account of certain claims.

Q. What was done with that?

I don't know after I paid it to Mr. Woolf.

Q. You paid him 600 dollars?

Yes; and 125 dollars for expenses.

Q. When did you pay him that?

49 I paid him 600 dollars in December, '74, and 125 dollars in January, '75, I believe.

Q. Refer to statement.

On the 4th of November, on account of certain claims, 600 dollars.

Q. Where does that appear again in your account?

It appears here in this statement of account?

Q. What was the amount of vouchers surrendered by Mr. Woolf, for which you allowed him a percentage?

I don't know, I am sure, how much it was. I think you have them.

Q. And the 25th of January was the other payment of 125 dollars?

Yes, sir.

Q. What year?

'75.

Q. Did Woolf ever pay back that 600 dollars?

Not to me, he didn't.

Q. What did you pay him 125 dollars for?

Expences.

Q. Expences for what?

Expences for travelling to Tintic and around the neighborhood.

Q. You furnished 600 dollars in cash and paid his expences while he was buying up those claims?

Yes, sir; certainly. That is, I paid him or agreed to pay him at the rate of 30 per cent. in cash for all the claims he could obtain, and allowed him 125 dollars for his expences.

Q. Do you know what rates he bought the claims in at?

I do not.

Q. Do you know that he was buying his claims there at less than 30 per cent.?

Parties told me they sold him some & and at a higher rate—45

50 or 46.

Q. Don't you know that he bought others less than that?

I don't know of my own knowledge.

Q. In distributing this fund you paid him 600 dollars and his expences, and you allowed him to charge, not what they cost, but this 30 per cent. cash, and 20 per cent. afterwards?

Yes; in accordance with the agreement that was made on the other side, between the trustees and Mr. Clohecy that these debts were all to be bought in or arranged for at 50 cents on the dollar.

Q. Was not that a sum more than 50 cents on the dollar?

Certainly.

Q. Why was it you were allowed more than 50 cents on the dollar?

I don't know.

Q. Why was it you were allowing Mr. Woolf more than they cost him while he was in your employment?

I could not tell.

Q. Do you know that many of those time-checks were bought up by Mr. Woolf for less than 30 cents.

I did not know at the time.

Q. What has become of this 600 dollars?

Mr. Woolf has expended it in vouchers, and time-checks for which he surrendered the vouchers.

Q. What is the amount he surrendered?

I don't remember exactly what the amount is. I presume that is about a third of the amount.

Q. What checks was it you were adding up in January; was that all that he had bought up to that time?

Oh, no; certainly not. That was merely a balance that was left.

Q. Did you ever settle that six hundred dollars in accounting with Mr. Woolf; and, if so, when?

51 Certainly, I settled it to a certain extent. That was 600 dollars paid on account, as the statement tells you, provisionally.

Q. When did you settle that item?

It was never actually settled, but he surrendered vouchers to an amount of a total value and it left him this 1,400 dollars owing.

Q. You say in January you paid him 125 dollars for his expenses?

That was his expenses going down there to buy them.

Q. Did he buy any?

Yes, sir. He continued to buy till I stopped him.

Q. You paid him, on the 25th of January, 1875, 125 dollars, that was for expenses?

That was for general expenses. He had to go around for something like a fortnight or three weeks.

Q. This was for services in January, '75?

No, it was not. He commenced, I think, a day or so after I made the first arrangement. That was November.

Q. He continued from January, '75, up to this accounting?

Yes, January '76. The 600 dollars was settled by means of his surrendering the vouchers.

Q. When was that settlement made?

Made about that time.

Q. Did you take that item of 600 dollars into your accounting in July, 1876?

Oh, no; certainly not, it had nothing to do with that because this was the balance of it; the balance remaining unpaid.

52 Q. Up to what time did Mr. Woolf continue to buy the checks?

Up to the first of January, '76, he continued to buy. He didn't buy anything after that.

Q. You are certain of that?

I feel sure, because I have some recollection that the amount was about 1,400 dollars on the first of January, '76. I could not state the exact amount. I may have the rough paper I took it down on somewhere.

Q. What was done between you and Mr. Woolf at that time—the first of January, '76?

All the vouchers were got out, and the amount of each voucher was put down by myself on a piece of paper, and that piece of paper, of course, was all added up.

Q. What became of the vouchers?

Either you or I have them.

Q. Did he transfer them to you at that time, or hold them?

Transferred them to me.

Q. On the first of January, '76?

No, the vouchers were not transferred to me then because I didn't

give him anything for them—it was not until July that he gave me the vouchers. I then gave him a sort of certificate—this certificate you have read just now—of the fact that there was a certain amount due him.

Q. To ascertain that amount due him, was it not necessary to take into consideration the 600 dollars?

No, sir; because the 1,400 dollars and *six* 600 dollars besides was due him.

Q. When was that balance struck?

53 As I told you, on the first of January, or about the first of January—a day or two after, I think.

Q. Did you ever state an exact amount due on this account to Woolf prior to the 15th of July, 1876?

I had stated the exact amount at different times as he had brought in the papers and shown me what he had obtained; on one occasion 450 dollars, and afterwards more.

Q. At these different times you would simply add up the amount at that time?

Yes, sir.

Q. Ask you if there was any interest in this account on those items?

Yes, sir; certainly.

Q. Ask if that was not taken into consideration in this statement on the 15th of July?

Yes, sir; certainly.

Q. And that amount, with the interest on the 15th of July, was 1,420.60 dollars?

Yes, sir.

Q. Was that the first time you had ever made any statement of 1,420.60 dollars?

The first time I ever made a statement of the exact amount of 1,420.60.

Q. Did he ever account to you for the profits he had made while he was employed by you, with money in hand and his expenses paid, by buying for a less amount than 50 cents?

Certainly not.

Q. How many assistants had you in retiring or attempting to retire these debts?

I had Mr. Clohecy and Mr. Woolf.

Q. Anybody else?

Not that I am aware of.

Q. Ask you if you have not testified you allowed Mr. Kahn 643 dollars on account of assistance?

54 No.

Q. Ask you if you did not allow him the full amount, the difference being 643 dollars for assisting you in attempting to retire this debt?

It was not for that *as* so much as it was for the fact that he showed me the vouchers where he had paid out 900 dollars cash for supplies.

Q. Did you report to the trustees that this was because they were influential men and aided you in bringing the others?

Yes, sir; I did, and to a certain extent they were.

Q. Ask you if you didn't have ample means in that 5,500 pounds to retire all the debts?

Perhaps I might if everybody would have taken 25 or thirty cents on the dollar.

Q. Why wasn't it done?

Because in many instances I had to pay the whole amount to get rid of it. There were many amounts I had to——

Q. State instances where you paid the full amount, and names.

Paid Mr. Bennett $1,050 *dollars*, and Kahn Brothers.

Q. You paid them one-half cash?

I really cannot tell you exactly who they were. There were sundry expenses; one hundred dollars for Matthews reporting on the mine; a thousand dollars to Mr. Clohecy.

Q. They were not old debts; state what old debts you paid.

You don't suppose I can state all the items?

Q. Can you name any other person or persons?

I cannot remember without referring to the statements. I did not take sufficient notice of names of individuals.

55 Q. Did you pay any considerable amount in full outside of Mr. Bennett?

Not any very large amount, certainly not.

Q. How much indebtedness did you retire in all with the funds that you were provided with?

I cannot tell you the amount without referring to the statements.

Q. About how much?

I think, probably, 45,000 dollars.

Q. Would that include this in suit?

I could not tell you; it is merely a guess.

Q. How much did you pay out of that 27,500 dollars you were provided with in extinguishing debts of the company?

I really cannot tell exactly what took up the Mammoth Copperopolis debts, and what was paid for general purposes. There were a number of items, of course, for general purposes, expenses.

Q. You say you estimate your services at 200 dollars per month?

Certainly.

Q. How do you make that estimate?

I consider that is lower than ordinary services—that kind of services.

Q. What kind of services?

As agent of these trustees in London, sent out here specially to look after their interests in the best way possible, and resigned the rights a man has. I would not stay here for 200 dollars a month for an English company if I had a great deal to do, but at that time I had leased the property, therefore my duties consisted in examining and ascer-

56 taining the exact amount of ore that was shipped, &c., and see that the royalties were paid, which I did until it was taken away from me.

Q. Where were you living at the time of these services from the 1st of December, '75, until July, '76?

In Salt Lake City.

Q. Were you ever at the mine?

Certainly not.

Q. What were you doing in Salt Lake to serve these trustees?

I suppose four or five days a week, out of every 6, I was around at Mr. Clohecy's office, or Scott and Anderson's, to ascertain what ore was shipped and what it assayed, and continually sending my reports.

Q. You state you made a lease to Mr. Clohecy; ask you if you were not apprised by the trustees that you had no authority to make the lease?

At one time I was, and at another time they told me if I wanted to grant a lease I had the authority in my own hands.

Q. Who was that communicated by?

Mr. Riley; he was pro secretary of the company.

Q. Ask you if there was not a new lease made by the Mammoth Copperopolis with Mr. Clohecy by resolution on the minutes?

I don't know.

Q. Ask you if you had any correspondence with the trustees, or any person on their behalf from some time about the time your account commenced here up to July, '76?

Certainly I had correspondence with them.

Q. Ask you if you received any letter within those dates?

Relative to what?

Q. Any letter at all; any correspondence?

From '74, a great number.

57 Q. From December, '75, up to July, '76?

Yes; I had two letters, I think.

Q. Ask if that correspondence was not through Mr. Riley, secretary pro. tem., of the Mammoth Copperopolis Company?

I don't understand it so.

Q. You state your services for which you sue began on the 19th of December, '75; ask you if on the 31st of May, '76, you did not write to Mr. Riley, secretary of the company, that you had received no letter since the 19th of November, '75?

Certainly, but I received a letter after that. That is correct.

Q. You received no letter from them during the time you claim for services here?

Yes; I received the last letter relative to my suspension, because I did not consider my services finished until I received that letter, because the cablegram said, "Powers temporarily suspended. Satisfactory explanation follows."

Q. Yes; but you say they were never restored?

I received a letter immediately after that confirming that, but in between them I received nothing.

Q. What royalties do you speak of?

Royalties under the lease.

Q. Ask you if the arrangement which the Mammoth Copperopolis had made with Clohecy, was not that he was to apply all the proceeds of the lease to the doing of certain work?

I don't think the company had anything to do with it. They never informed me. All my knowledge is gained through Mr. Clohecy
58 himself. They dealt with him directly in regard to that, and never informed me. That was my complaint.

Q. Did they ever employ you to do and inspect royalties after they had made the arrangement with Mr. Clohecy?

They never did. I was still in the service of the company. They never told me my powers were suspended and I was still in their service.

Q. Now, how far was it from where you lived to Mr. Clohecy's office; and the office of Scott and Anderson?

They were on Maine street.

Q. Were the royalties coming in three or four times a week?

I would go around and see whether there was anything coming in, and they would say no. They would insist on my coming down to-morrow; we expect it to-morrow; and next time, perhaps, say, no it is not in to-day, you may go down to Scott and Anderson's sampling place and see whether anything has arrived.

Q. Did you ever go to the mine to examine what was shipped and what was taken by Mr. Clohecy?

Never went to the mine. I referred to the bills of lading that were produced, and the assays and samples.

Q. That arduous duty you say is worth 200 dollars a month?

Certainly.

Q. During the time you have sued for, ask whether you were not engaged in other business?

No, sir.

Q. Were you engaged in teaching music?

Most distinctly not.

59 Q. Ask you if you were not keeping a lodging-house in this city?

No, sir.

Q. Did you rent a lodging-house in this city and keep it?

Never, sir.

Q. Did you rent from Mr. Gilberson as agent and keep it a lodging-house?

Is it necessary to enter into private matters? I had no other service.

Q. Did you rent that for your own account?

No, sir. I rented it because the proprietor of the house would not rent it to the party that wanted to take it, and I nominally took it for another party.

Q. Wasn't that used for a lodging-house, and didn't you have direction of it?

That was a boarding-house, and I had nothing more to do with it than you have. I paid my board.

Q. Did you pay the rent for it?

I did not, sir; although the rent was made out of me.

Q. Who was renting that boarding-house?

I don't know whether that is necessary to go into private matters.

Q. Wasn't you spending the most of your time there with an accommodating woman named Mrs. Lovell, with a lot of other whores in that place?

(Objected to.)

Q. How often was it necessary for you to go there and ascertain the amount of ores shipped?

Three or four times a week, and sometimes every day of the week.

60 Q. You didn't go and inspect the ores in the mine, you went to inspect the returns in the office. Why couldn't you do that just as well once a month?

I wanted to see that they were working it properly, by means of what ore they were taking out. It was my duty to try to ascertain.

Q. Why didn't you go the mines?

I didn't come out here as a mining man; never had anything to do with a mine.

Q. Why did you assume that role then?

I didn't assume it, because Col. Stewart would not come. I told them I would have nothing to do with the mining.

Q. How often were those returns of ore made then?

Statements, regular tabular statements, were made out once a month.

Q. Why was it necessary, inasmuch as you referred to the statement of theirs in the office, for you to go there oftener than once a month?

It was necessary for me to go there and see whether they were working the mine properly in order to inform the other side.

Q. You could ascertain from those statements whether Mr. Clohecy was working the mine properly?

Yes, sir; at the end of the month it would, to a certain extent, show me how much ore was taken out, but I didn't to believe his statements altogether. It was necessary for me to go and examine myself. I should not take the lessee's statement, in writing, of the fact that he had taken out 150 tons of ore at so much.

61 Q. What better evidence did you get?

The bills of lading. He was bound to ship it all to one place. I don't see how he could get away with it very well.

Q. Haven't you stated to the company, prior to these services you claim for, that you never expected, when you came out, to be furnished with more than 6,000 pounds?

I did expect more. When I left England they expected to raise 10,000 pounds, and 8,000 pounds was to be distributed, and I thought I should get that or very nearly all of that.

Q. Ask you whether you did not state to them in a letter that you did not expect more than 6,000 pounds?

Yes, sir; and if they had sent me that, it would have been all right, and not taken the royalties away from me.

Q. How much royalties were paid?

I don't know that, because you took it afterwards. I mean, you had the returns given to you afterwards; it was to pay off some work done on the mine.

Q. You don't pretend to say that I received any of the royalties?

I don't say you received any.

Q. Ask you whether you did not receive, after your discharge, 75 dollars?

No, sir; I did not.

Q. Ask you if, in your statement, you have not stated there was a balance in your hands of 75 dollars?

No, sir.

Q. You never rendered that statement to me?

Not that I remember of; I don't remember it.

(Paper handed to witness.)

WITNESS. That is not in my hands; was not in my hands.

62 That is merely a return showing the amount of royalty, and what had been disposed of, showing 75 dollars that Mr. Clohecy owed.

Q. Isn't that a statement of cash between you and the Mammoth Copperopolis (Limited)?

No, sir; it is merely a balance of account. Mr. Clohecy has never paid that.

Q. Is that in your handwriting?

Yes, sir.

Q. Who is the debtor, and who is the creditor?

The debtor is the trustees.

Q. Is that what you have stated?

Yes; because that was merely a statement sent home at that time.

Q. From whom to whom?

From myself to the trustees.

Q. Is it so stated?

It is; C. W. Cook to the trustees. It does not mean that I ever had that 75 dollars.

Q. Who had it?

I don't know where it went to. It was in Mr. Clohecy's hands.

Q. You have stated you were debtor to that?

It was merely a statement sent home—nothing in the world more. I never received it.

Q. That is in your handwriting?

Yes, sir; so far as I know.

Q. You state you rendered this to the trustees of the Mammoth Copperopolis of Utah (Limited)?

That is not a correct term, trustees of the first debenture holders, which of course is held from the Mammoth Copperopolis of Utah (Limited); that is the correct term according to the English language.

63 Q. Couldn't you have got the same information from Mr. Clohecy in his statement?

No, sir.

Q. Why?

Because Mr. Clohecy was not here.

Q. Where was he?

I really don't know. At the time I heard he was in London.

Q. Why did you go to his office?

Because he told me he had left a power of attorney with Mr. Bamberger—J. E. Bamberger.

Q. You were referred to him for information?

Yes, sir.

Q. How often did you get statements?

I could not tell. A regular statement was delivered once a month, but he gave me a statement in between two or three times. There was a regular monthly statement made out by him for my information.

Q. How many between times?

There were two or three in between times. I don't know how many. That was merely memoranda.

Q. How many items; what extent of labor was it making out those statements?

The labor don't amount to very much?

Q. What amo'nt of royalties did you collect during that time?

I collected one hundred dollars in cash.

Q. When?

That was from the commencement of the time; I think it was in December or January, '75–'76.

Q. That is the hundred dollars you refer to as being paid?

Yes, sir.

64 Q. Is that all the royalties that came in while you were acting?

That is all I received, because it was stopped.

Q. How long had you been acting before it stopped?

In the form of lessor do you speak of?

Q. I speak of royalties.

Then I had been acting since the 13th of October.

Q. Up to what time; when was it stopped?

I forget the exact date; but somewhere about December or the commencement of January; I think it was December, 1875, that he paid 165 dollars on account of royalty. The one hundred dollars I kept on behalf of my own salary, and accounted for it in the statement that went home.

Redirect:

Q. Speaking of those royalties, I will ask you whether you ever received any other money out of the royalties, except this one hundred dollars?

Certainly not.

Q. Hadn't you been working the mine prior to the time Clohecy leased it?

I had been working it through Mr. Bamberger.

Q. Now with what result; loss or gain?

Loss, unfortunately.

Q. How did you provide for that loss?

I provided for it by having borrowed money.

Q. Did you ever repay it?

Certainly.

Q. How?

Out of the royalties.

Q. Were those royalties in addition to this one hundred dollars?

Yes, sir.

Q. As a matter of fact you paid off this debt out of the royal-
65 ties, in addition to the one hundred dollars?

Yes, sir; I don't know that I paid the whole of it off myself, because possibly some of it remained after my powers were suspended.

Q. How did you provide for it in the mean time?

Borrowing the money.

Q. And paying it?

Yes, sir; certainly.

Q. How did you get the money?

Got the money by getting a loan.

Q. Did you give your note?

No; I gave no note. It was not requested.

Q. You paid off this debt out of those royalties?

Yes, sir.

Q. Then how much royalty did you receive up to the time those royalties were withheld. Can you tell?

I only received actually 105 dollars.

Q. How was the other received?

The other went to pay off this debt.

Q. You consider they received it?

Certainly, to a certain extent.

Q. In that statement of account made on the first of January, 1876, was on vouchers, as I understand you to say, presented by Mr. Woolf?

It was.

Q. Did you run over those vouchers at the time, so as to ascertain the amount that was due to Mr. Woolf on them?

I did to a certain extent; that is, I dotted down the individual account, but the order and detail, perhaps not exactly.

Q. When you did that did you agree that that was the amount agreed upon?

66 Yes, sir. About 1,400 dollars.

Q. What amount of the amount of July, 1876, evidenced by that written statement there, was found due in July, that had not been previously examined and ascertained?

No part of it.

Q. It is the same account then?

Yes, sir; really the same account.

Q. But corrected up to that date?

Yes; more perfectly.

Q. But the bills had been audited and the amounts ascertained before that time?

They had.

Q. It was agreed what they were?

Yes, sir; certainly.

Q. At the time that this was made Mr. Woolf delivered to you those vouchers?

He did.

Q. You returned them?

Yes, sir.

Q. No question made by the parties to whom you returned them as to their correctness?

No, sir; none whatever.

Q. For whom did you act in leasing this mine to Mr. Clohecy?

The trustees.

Q. Had you prior to that time received from them this notice that you had the power to lease the mine?

Oh, certainly, some before that.

(Defendants move to strike out the witness's answer as new examination. Motion denied; defendants except.)

67 Q. What information from the trustees did you have as to any modification of that lease; did you ever have any?

Never any at all.

Q. From whom did you get the information that the lease had been modified?

From Mr. Clohecy, himself.

Q. About what time did you get that information?

I presume somewhere about July; I think that he gave me some idea of it July, '76.

Q. How long prior to that time had you been without receiving any royalties before you had this explanation?

Since December or January; I forget which it was.

Q. Was this 600 dollars you refer to as having been paid to Mr. Woolf—when was that account settled?

I don't know whether that account was actually settled. It was settled to a certain extent only.

Q. When was it ascertained?

At the time.

Q. At what time?

On the 4th of November, '74.

Q. That, then, was for services rendered and for vouchers taken up in 1874?

Yes, sir, for what he already held.

Q. Were those payments made at the rate of 50 cents on the dollar?

They were made at the rate of 30 cents on the dollar with a future 20 cents to be given on some future day.

68 Q. Judge Rosborough asked you in relation to the attention you gave to the matter on receiving ores and royalties—rather on the ores from the mine; for what purpose did you go to this office or these offices in the intermediate times—you had a regular statement, as I understand it, at the end of each month—in the intermediate times. Why did you go?

I went to ascertain whether any ore was being shipped—whether they were really working the mine, because I had heard outside two or three different statements. On one occasion they said they had stopped working down at the Mammoth Copperopolis, and that caused me to look, and many things.

Q. What did you do with such information—was it for your own information only?

It was for the information of the trustees.

Q. Did you give them the information you received?

Certainly.

Q. Did you write to them frequently?

I wrote them in regard to anything I ascertained, and everything as far as I could.

Q. What objection was made by the trustees to the manner in which you discharged your duties here?

None whatever.

Q. Have you a letter in your possession in pursuance of that cablegram?

The letter is in evidence previously; the letter referring to that particular.

Q. Did you at any time notify the trustees of these claims of Mr. Woolf?

69 I wrote to them by means of the statements and letters at the times—Statements made showing that was being done, but I did not say anything about this particular claim by name. The letters expressed the general mode in which it was being carried on.

Q. No particular statement of this account?

No, sir.

Recross-examination by Judge ROSBOROUGH:

Q. Did you write to the trustees informing them of your proceedings?

Yes, sir.

Q. To whom were those letters addressed?

They were addressed in the first portion of the time to A. F. Sheppard, and the latter part of the time, S. W. Riley.

Q. Ask you if your correspondence was not with the secretary of the company?

No, sir; I hardly understand it as such. He merely took my place as secretary of the company; there was no duties for the company to perform.

Q. Was the company liquidated; it was in existence legally?

I presume it was.

Q. Didn't it have an office and officers?

Yes, sir; they are obliged by statute to have an office until it is liquidated.

Q. You state that in your working the mine, yourself and Bomberger, lost money, created a debt?

Yes, sir; the expenses were rather more than the proceeds.

70 Q. Ask you if you did not expend there a sum in charcoal and quicksilver, about 8,000 dollars of value of property?

Certainly. It didn't bring in anything like that that I am aware of. I used up all I could get in order to get means to go on.

Q. Who authorized you to borrow money?

Nobody authorized me to borrow money except individually.

Q. In whose name did you borrow it?

For the trustees. Merely kept on work and endeavored to the best of my ability to obtain the money in that way.

Q. Did you borrow money during your operations?

I had to borrow money at the end.

Q. Did you borrow it during your mining operations?

It was borrowed.

Q. Where did you get your authority to do that?

The authority was invested from the trustees, that I had to do the best I could.

Q. About how much money was it?

I forget how much, really.

Q. Altogether?

I really forget. I think about 11 or 12 hundred dollars; it was a mere nominal sum, and had the 500 pounds further been sent me, I could not have been in debt.

Q. You expected that to go on mining?

Most decidedly I did.

Q. Can you state to the court why you did not pay out that money in extinguishing the debts of the company?

71 Because I wanted to go on working the mine, and those parties said they would wait.

Q. Why is it you did not give Woolf a note on the first of January like you did other people?

The merchants and other people had an actual stated account already due to them, therefore they could take a note, but Woolf was in a different way altogether. He was authorized by me to purchase anything that appertained to the Mammoth Copperopolis of Utah (limited), on a basis of fifty cents on the dollar. He was to receive 30 cents on the dollar in cash and 20 cents at some future time. To-day he would have 200 dollars perhaps, and the next 40 or 50 more.

Q. When was it you agreed to pay his expenses?

On the 4th of November, 1874; the time I first made the arrangement with him.

Q. Does it take 125 dollars expences to go from here to Tintic?

He made out to me, I think, pretty satisfactorily that it would take more then that. It was not as though you could find all these men in one place; but these men were scattered all over the country.

Q. When you had him in your service and paying him, why is it you allowed him to be speculating on those debts?

72 I didn't know he was speculating; I could not possibly tell that at the time. When I arrived here everything was against me—even Mr. Clohecy.

Q. Didn't you pay him a thousand dollars for services in that behalf?

Yes; because they made that agreement in London.

Q. You say he was working against you?

He first of all advised me. Says he, "Have you got the money?" I said no. He said, "You better go back again if you haven't got the money."

Q. He worked against you?

Yes, sir; he did momentarily. And Mr. Woolf, when I offered him a note on one or two occasions, he said, "Well, let the thing go as running account."

Q. Ask you if the payment of his expenses was not unsettled?

The payment of the expenses was made on the 25th of June, 1875. That was made then; that was nothing to do with the other portion.

Recess.

THOMAS E. CLOHECY sworn for the plaintiff.

Q. Where do you live?

Salt Lake City.

Q. How long have you lived in Utah?

I think I reached here the latter part of July, '71.

Q. This has been your home since ?
Yes, sir.
Q. What has been your business ?
Mining agent.
Q. Superintending and managing mines ?
More of management then superintendence, although I have superintended mines.

73 Q. Do you know Mr. Cook, who has testified in this case ?
Yes.

Q. Are you the Mr. Clohecy that he mentioned in his testimony ?
Yes, sir.
Q. State if you obtained through him a lease of the Mammoth Copperopolis mine and property.
Yes, sir.
Q. Something was said about a modification of that lease. Do you know anything about that ?
Yes, sir.
Q. That is the only modification that was made after the lease was——
By Judge ROSBOROUGH. I will first ask whether this lease was in writing, and whether the modification in writing——
Q. I ask if there was a modification of the lease ?
I don't know whether you could call it a modification or not; it was diverting the royalty from one purpose to another.
(Objected to as not the best evidence, irrelevant, and immaterial.)
MCKEAN. We don't propose to offer evidence of the modification more then the fact; we don't propose to prove the contents, but the facts. We propose to show that there was a change made, and by whom ?
By the COURT: I think we better have the writing.
Q. Is it in writing—this modification ?

74 No, sir; that is only in letters where they have referred to the lease and the contract into which they had entered with me. I have not this contract in writing. It was a verbal agreement made between Lord Claud Hamilton, John Elliott, and myself in London.

Q. Have you the lease ?
I don't think I have.
Q. That was in writing ?
Yes, sir. Mr. Cook had it, or a copy of it, but I don't think that I have got it. It was in my possession at one time, but I don't know what has become of it.
By Judge MCKEAN, for plaintiff. This oral understanding between the witness and Lord Claud Hamilton—we propose to show what the oral understanding between them was——
(Objected to by defendants because there is a contract in writing, and if there is any modification of it, it must be of equal dignity. We insist that there can be no modification of it unless it is in writing.)
By Judge ROSBOROUGH. Would like to ask the witness with regard to this document, whether or not, when you were in England at the time you speak of, you did not have dealings with the board of trustees of the Mammoth Copperopolis, and whether there was not a resolution entered upon the minutes of the board of directors there as to

75 the terms on which you were to operate the mine ?
I have no such knowledge.

By Judge R.:
Q. Haven't you a copy of that resolution ?
No, sir.

Q. Haven't you acted under it?
No; I don't know that I have.

By Judge R.:

Q. At what time was this dealing or modification?
I don't know that I could give you the exact month; it was some time in the spring of '76.

By Judge R.:

Q. Ask you if it was not on the second day of May, '76?
Oh, no; the arrangement about this contract work was prior to that.
Q. Were you not in London on the 2nd day of May, '76?
I think I was there, but this arrangement in reference to the contract was made some months before that.

By Judge R.:

Q. Ask you if you did not receive a copy at 17th street from the Mammoth Copperopolis Company?
I don't recollect ever seeing such a document. I received documents from them in relation to the formation of this new company.
Q. Ask you whether you did not receive from them a modification of what you claimed to be the terms of the lease?
I don't know whether I did or not. This business of changing the royalty was in March some time.

76 Q. Ask you if that was not done by the board of directors of the Mammoth Copperop'lis Company?

I never understood that to be the case, because Lord Claud Hamilton, John Elliott, and other directors told me that the Mammoth Company had no right in the property then; that it was in the hands of the trustees for the debenture holders. My dealings were direct with Lord Claud Hamilton and John Elliott as trustees. They themselves told me, and I knew of my own knowledge, that an application had been made for liquidation, because I saw an advertisement to that effect. They told me in the office that the company had no right in the property. I always understood I was dealing with the trustees, not with the Mammoth Copperopolis Company.

By Judge McKEAN, resumed:

Q. When did you go to England?
I left here in November, '75, and I left London, I think, on the 11' of May, '76.
Q. It was between those periods that these conversations were had?
Yes; but it was early in the year '76, that this change in the lease was had diverting the royalties to the purpose of prosecuting work on the mine.
Q. You are familiar with mining operations in all their details?
Comparatively so.
Q. Have been for many years?
For ten years.

77 Q. Do you know what, if any, services Mr. Cook rendered to the defendants in this Territory?

Yes, sir. I know that he——
(Objected to unless confined to the time that this cause of action accrued that is sued on.)
Q. You say you heard Mr. Cook's testimony this morning?

Partially. I was not here all the time. I heard a portion of it.

Q. Do you know whether or not Mr. Cook rendered services for the defendants in this Territory between December 1st, '75, and August 1st, '76?

I was absent most of that period—not in the Territory. Got back—I think I reached Salt Lake on the 28th of May, '76. I will not be positive.

Q. After that, do you know of his rendering services?

I know he came to me and demanded that I should make certain modifications in the lease that he had given me the year previous; on which point I had also information. The people told me in London they had written to him to do so, and immediately after my arrival he made that demand.

Q. What else do you know of his doing?

I made reports to him from that time up until I received notice from London that all my future reports were to be made to Mr. Rosborough, as he had been appointed the agent or attorney in fact.

Q. When was that?

I really could not say; must have been somewhere about Sep-
78 tember or October, '76. I think it was about that time.

Q. Did you hear Mr. Cook's testimony in reference to the services rendered by him this forenoon?

Yes, sir.

Q. What, in your opinion, were his services worth per month?

It is very true that the services that he rendered did not require any great labor, but my impression is that anybody holding the position in this Territory of agent, manager, or superintendent of a foreign corporation, if he had nothing to do but simply to communicate with them is worth 250 or three hundred dollars a month. The mere fact of his being ostracised from his own home is worth that much.

Q. You say anybody—do you apply that to Mr. Cook?

Yes. I think his services were worth that much.

Cross-examined by Judge ROSBOROUGH:

Q. You say your dealings were entirely with Lord Claud Hamilton and Mr. Elliott?

I understood they were the principals in the matter, although I met a large number.

Q. Didn't you equally understand from them then and there they *were* repudiated *by* Mr. Cook' authority to make that lease?

Almost immediately after my first interview they denied that he had authority, but immediately following that they entered into this new contract with me to work the mine under the lease and pay the royalties in work.

Q. Did they specify that Cook was to oversee your operations here?

No, sir.

79 You never told him he was removed?

He never was removed until after I returned from England. I wrote Mr. Riley that Mr. Cook had threatened me to take legal proceedings to make me conform to the modifications he wanted me to make.

Q. You speak of Mr. Cook being ostracised from home; who ostracised him?

They did. They insisted upon his coming out, they say themselves.

Q. Do you know that they communicated with him from the 1st of December, '75, till the 1st of August, '76?

No; they told me they had not communicated with him for some time. They told me that and he told me also.

Q. What was the clause in that agreement; that you were to be overseen by Mr. Cook in your operations?

No answer.

Q. Ask you whether you have not written to them directly reporting your work there and proceedings?

Yes, sir; because that was agreeable to the understanding we had entered into on the other side. They informed me at the same time that I was to report to Mr. Cook, as they would continue to expect to hear from him.

Q. Who were your contracts or negotiations carried on with?

Directly with Lord Claud Hamilton and John Elliott—so I understood—although there were others present at different times.

Q. Your negotiations were with them alone?

80 I understood they were the principals in the matter, acting for the debenture holders, although as I say, several times there were more or less present. Sometimes two or three, other times a dozen of them at those various meetings.

Q. You have spoken of Mr. Cook being ostracised; do you know that Mr. Cook had solaces as much here as he could have in England?

I don't know that——

(Objected to.)

Q. Don't you know that he had another one here?

No, sir, I do not; I don't know anything about that.

Q. Utah fashion?

I don't know anything about that.

Q. Do you know much about the North House?

No, sir, I don't; I simply know there was such a place; I simply know that it was a boarding-house some five or six years ago. There were different people in charge.

Q. You haven't been there since the new arrangement?

I think I have only been there once or twice in the last three or four years.

Q. The services you know of Mr. Cook rendering was demanding some modifications of that lease?

That's all I know of, and I wrote from the mine a time or two.

Q. Your business was not to report to him?

They instructed me to report to him and them also.

Q. Was he much about your office after the 1st of December, '75?

I don't know, because I was not in the office much; because, after I came back I was at Tintic most of the time. He was never at

81 the mine to my knowledge.

Q. Do you know of his ever going out of the city during the time from December to August on the business of the company?

No, sir; not to my knowledge.

Q. When they did not communicate with him all that time how do you know that they kept him ostracised here?

From the fact that they never removed him, and that he was not at all removed from his position as the agent until that time

Q. He was not removed from his position until June, '76?

I suppose not. I suppose all the powers were suspended at the same time.

Redirect by Judge McKEANE:

Q. Do you know where Mr. Cook boarded up to August, '76, after his suspension?

Yes; I think he boarded around at what they call the Moch House.

Q. Do you know when he went to the Moch House to board?

I could not tell exactly; I think it was in '75.

Q. Was it before or after he was suspended?

Oh, he was boarding at the Moch House before he was suspended, I think.

CHARLES W. COOK recalled for pl'ff.

Q. When did you go to the Moch House to board?

In December, '74; was there until the following December, then left it and went back again in August, '76.

Q. Where did you board prior to that time?

82 Boarding at the Walker House; prior to going to the Walker House, in the first instance and the Octagon House afterwards, up near the Presbyterian church.

Q. When did you last commence then at the Moch House?

The 1st of August, '76 to the 1st of August, '77.

ISAAC WOOLF sworn for the plaintiff.

Q. Are you the plaintiff in this case?

Yes, sir.

Q. Did you hear Mr. Cook's testimony in this case?

Yes, sir.

Q. What, if any, arrangement did you and Mr. Cook make in regard to your taking up claims against the Mammoth Copper'polis Company?

I think it was in the latter part of '74 when Mr. Cook came here as agent for those debenture holders that I entered into an arrangement with him whereby I was to buy up liens, attachments, labor-claims, and all those for these first debenture holders, as they term them.

Q. What was that arrangement?

I held some papers prior to his coming here, being a merchant and having business with merchants in different settlements in Tentic, the time that the property was in running order, I used to take them—a man would owe me 4 or 5 hundred dollars and would give me 200 dollars on the company and I would bring it here and get my money and I so continued until there was no more money and I still held some paper when he came here and was about

83 making arrangements to buy up all these claims, he came to me; and wanted to know how much I had got and what arrangement he could make with me. We then entered into an arrangement whereby I was to get 50 cents on the dollar for what I had. He didn't want to take up that which I had unless he thought or had an idea that all the rest would come in at the same rates, that is, those parties down in the settlements and over at Tintic. I told him I had been offered paper there at various times, but would not touch it, fearing that there was no telling how the thing might come out. I had all I could possibly handle at that time, but I fully knew that I could buy up pretty near or almost all their claims that they held in these different places in these different amounts. Some I would give 65 or 70 in merchandise, for others I would give 45 or 50 in cash, &c. To do this I told him I would need some money and he gave me then 600 dollars, and I believe I gave him at that time all the paper I held, as we were strangers to

each other. He held that paper and I took the 600 dollars and went to Tintic. I went to Tintic and bought up a good deal of the claims and came back. He took them and gave me credit for them, paid me
84 some money, and I think I went back again and came back and got some more money.

Q. Bought more claims at the second time?

Yes, sir; then they were getting in some of them in the store and I took up what I could then. Then I came again with my paper as usual. He says, "Mr. Woolf, I have got no money to pay these yet. I am expecting money every day." It went along for a week, &c., then I would go again with my claims. No money yet, and it came round the first thing I knew Mr. Cook was suspended and there I remained with my paper, and, of course, I had no other alternative then but to sue for the recovery of the money that I had laid out.

Q. Did or did you not at any time during this interval—you and Mr. Cook—examine your matters and these different claims and find out how much was due?

He always knew from time to time how much paper I had, because I always made a demand saying "Here, I have got so much paper on hand and I need the money." He says, "What can I do? I am expecting money almost every day. I can't pay you without I get it." He knew just exactly how much I held all the time.

Q. When, if at all, did you and he take these papers—these evidences of indebtedness and look them over and definitely ascertain how much was due?

85 Just as soon as his powers were suspended, "There," I said, "I don't know what to do." I says, "Here Cook, you might be called to England to-morrow," says I, "I have got nothing to show only these papers; and you are thesole agent here; you had better give me something in some shape or form to show that I hold so much paper against the company." Well, then, he didn't know exactly what to do and asked me about notes. I told him I didn't want any notes. I would sooner have the labor claims. He then gave me some writing going to show that an agreement was made between me and himself for the purchase of those claims.

Q. Was previously made?

No, he didn't make that until after I had made all these demands, because he had no money.

Q. You don't understand me; you said he gave you something—that an arrangement had been made about buying up those claims—that is, in the fall of '74?

The arrangement was entered into in the fall of '74, and that continued and continued until he was suspended. Then I told him "Here, you give me something to show that such an arrangement was entered into between you and I in that year, so that I can show something for what I have done and for what I still hold."

By Judge ROSBOROUGH:

Was that in writing?

(By Judge ROSBOROUGH:) We call for the protection of it.

Q. Do you refer to the paper that was produced this afternoon?

Yes, sir.

Yes, sir. (Paper shown to witness.)

86 WITNESS. Yes, this bottom is what I asked him for, to show that the agreement was made with us prior to his being suspended.

By Col. MERRITT:

Q. What date is that?

That is the 15th of July, '76.

Q. Did you ever have—you and Mr. Cook—any examination of these accounts at any other time than the 15th of July, '76?

Pretty near every two or three weeks or every month I would bring them up to him, and ask him for the money. At times he would look them over and see that there was so much due me. He knew at all times how much was due.

Q. You claim in this suit a certain amount due in these transactions; when did you first ascertain the amount? When did you and Mr. Cook, if ever, ascertain how much balance was due you because of your proceedings, as you have detailed, and buying of these claims?

I don't understand you.

Q. You claim that there is 1,420.60 due you at a certain time?

That was the balance.

Q. When did you ascertain that that balance was due you?

He knew of the amount, but he did not, until the 15th of July—did not take the whole of the items together. He may have done so previously. That 1,400 dollars was due me—I could not tell as to the time.

Q. About how long before, or when was it, when you and Mr.
87 Cook ascertained that 1,400 and some dollars were due you?

Now, as to the real date, I cannot say.

Q. Read that paper through—look it over from top to bottom, dates and all?

That is dated January 1st, 1876. Now, he had, all the time prior to this, known how much I held—it had been, at different times, presented to him for payment.

Q. What, if anything, did you and Mr. Cook do about the first of January, 1876?

About that time I brought in my claims to him and asked him on or about that time to give me a certificate—showed him the whole of my claims.

Q. Did he look at them to see how much they amounted to?

Yes, sir; and reckoned them up.

Q. Did you and he then ascertain how much was then due to you?

Yes, sir.

Q. How much did you and he ascertain was then due to you?

Some 1,400 and odd dollars—around about 1,400 dollars.

Q. That was about the 1st of January, '76?

That was about the first of January, '76, but no paper was given to me at that time.

Q. There was no writing?

But, even prior to the first of January, all the time talking about these accounts, and he knew just how much there was.

Q. This paper you hold in your hand was not made then at that time?

No, sir.

Q. You have already said, if I remember aright, that it was
88 about the 15th of July, 1876, that this paper was made?

Yes, sir. You see in claims like this, a merchant cannot give the dates. I can't keep them in my mind.

Q. What did you have to do? What was required to make an account of these claims that you had become the owner of?

(Objected to, as not as a matter of fact.)

Q. What did you do? Did you take the papers? Did you take the evidences of indebtedness themselves?

I took the evidences of indebtedness right to him—the papers—each and every claim and judgments and liens I brought to him, and he looked them over on or about the 1st of January, 1876.

Cross-examined by Judge ROSBOROUGH:

Q. When was that paper written—the whole of it—which you hold in your hand, dated the 15th of July, '76?

I think this was written on the fifteenth of July.

Q. All of it?

This here was made before that.

Q. When was this first writing above put on that paper?

That was in January, '76.

Q. You kept the paper all this time and then had this portion put on?

No; this was not on at this time.

(Question read:) When was this first writing above put on that paper?

I could not positively tell.

Q. In whose handwriting is it?

The top is in mine.

89 Q. State as near as you can when you wrote that writing.

If I got it there January 1st, it must have been at that time that I made it out, but I could not recollect as to the dates; the papers have all been here in court so long I could not state the dates.

Q. You have stated that Mr. Cook told you his powers were suspended at a certain time—was not the whole of that paper writing written after you were so informed?

This here, I am sure was, that is the bottom part, because I didn't want anything else but the money for the papers I held until his powers were suspended; then I asked him for something to show that he had at such times entered into such an agreement with me.

Q. Ask you if the whole of that was not written after you were so informed?

I could not really say; I think it was, because I had no need to make out my papers before that time.

Q. Did those vouchers you had bought up, any of them bear interest?

I think there is some; I won't be sure.

Q. In making up your account to the 15th of July, '76, bear interest up to that date?

Some of them did, I think, and some of them didn't.

Q. The interest then entered into that total sum of 1,460 dollars?

No; I think the 1,420 comprised the whole with the exception

90 of two or three that held the interest.

Q. The interest on those was computed?

No, not on the whole.

Q. On those two or three?

I don't know whether that is any of the claim of $1,420.60, but for all the claims with one or two exceptions and interest.

Q. How many times did you present vouchers to Mr. Cook, prior to July 15th, '76?

I presented them so often that I got sick and tired of presenting them.

Q. Did you leave them with him or still retain them?

I still retained them.

Q. Did you at these various times render a written statement of the account, with the items, with the interest?

No, sir; not with the interest. Every now and then I would go up and present him with the different claims, judgments, and liens and say, there is the amount.

Q. Did you make out a statement of the items of that account and render it to him?

No, sir; not a statement, I had the vouchers themselves.

Q. Did he & you at any time, prior to the 15th of July, '76, sit down and compute the interest on the interest-bearing vouchers?

Not that I remember.

Q. In making your balance on the 15th of July, 1876, of $1,420.60, you computed the interest up to that time on such of them as bore interest, did you not?

I won't say for sure about that—come to think of it I don't think there is; I won't be sure.

91 Q. Did you at any time prior to the 15th of July, 1876, between you and Mr. Cook state that balance of $1,420.60?

Yes, sir.

Q. That exact amount?

I should say, yes.

Q. $1,420.60?

Yes.

Q. When was that?

At different times.

Q. How did you ascertain that without regard to the interest?

That is just as I told you before; I don't think there was any interest added. I won't be sure on that point, but I think, as far as I can recol'ect, that there was no interest attached to the 1,400 and some odd dollars—that it was all the solid labor claims and so much money.

Q. Was there any interest allowed on the moneys advanced by him to you?

No, sir.

Q. At what times, how much, and when did Mr. Cook advance to you money to purchase in the debts of the Mammoth Copperopolis?

(Objected to as immaterial, the suit being on a stated account.)

Q. Were those the exact figures and amounts you agreed on as a balance on January 1st, 1876?

Yes, sir; that was the exact amount—$1,420.60, as far as I can recollect.

Q. If you had stated an account once, why is it you wanted another statement of account?

I didn't want any other statement of account; I just wanted something from him to show that I held so much.

Q. You are certain there was no interest computed on any of the vouchers you held, from January '76, to July '76?

I will not be certain.

Q. Had there been any payment between those dates to you?

No, sir.

92 Q. Who computed the amount due on the first of January, '76?

I believe, myself; and after I computed it I showed it to Mr. Cook, and he looked it over and found it was correct.

Q. Where is that computation?

I don't know. I could just figure that up on a blank piece of paper—just draw it up—my vouchers were sufficient for that.

Q. Can you state positively that you and Mr. Cook agreed on these exact figures, 1,420.60?

Of course we agreed on them. There was nothing else to agree on. The amount was that.

Q. You charged no interest from that to the 15th of July?

I can't say on the interest.

Q. I will ask again; state how much, when, and what sums of money Mr. Cook advanced to you to buy up claims of the Mammoth Copperopolis Company?

(Objected to.)

By Judge ROSBOROUGH. My purpose is this: If he was employed there and furnished money to buy, he was not in a position to make a profit off of this trust fund; Mr. Cook says he allowed him a certain amount, and whatever margin he got it under that he was entitled to himself. If his expenses were paid by Mr. Cook in travelling round the country buying up these matters, he was so far an agent of these beneficiaries that he ought not to be allowed a profit on them.

(Objection withdrawn.)

Ans. The first amount that I got, I remember, was 600 dollars.

93 Q. The date of that?

I could not give you the date of that unless I could refer to the ledger of '74.

Q. State as near as you can.

I can't do it out of my head, having business at the same time. But the 600 dollars I do remember of having received when Mr. Cook was here a short time. That must have been about December, '74, or January '75. He came in November or December, '74. The 600 dollars didn't get into any arrangement before that time. I think it was a couple of months afterwards. I won't be certain as to the dates.

Q. State the other amounts and the other times.

I got some some from him three or four weeks after. The amount that I got from him I made a deposit of. I could tell better by referring to my deposits, but I could not tell as to dates. I know he made two or three payments.

Q. Have you ever surrendered those vouchers; and, if so, when?

I surrendered the vouchers on the first 600 dollars. I held some 17 or 1,800 dollars' worth of vouchers which I turned over, then received 600 dollars to *to* go and buy as much as I possibly could for that, and when that was exhausted I was to return vouchers again and buy more.

Q. When did you return the last lot of vouchers or claims?

I never returned them at all. I returned them here to the court.

Q. You have got them yet?

94 I have got them yet; that is, I turned them over when I got the stated account and the vouchers. I believe I handed them over to Judge McKean. He was looking them over, and taking a copy from each of them.

Q. Why were they not surrendered at the time Cook and you had the accounting on the 15th of July, '76?

I didn't get no money for them.

Q. When is the date of the last purchase of claims you made against the Mammoth Copperopolis Company?

There is several dates there in the latter part of '75.

Q. When was the last purchase you made?

I could not tell when the last purchase I made. A man comes into the store, perhaps in the latter part of '75; says he, "Now, what will you

take this for?" and we bought it; and I could not when the last time was in '75 that I bought up those things.

Q. Did you purchase any in '76?

No, sir.

Q. You still have all of them that you had on the first day of January, 1876?

Yes, sir.

(Plaintiff offers in evidence letter dated June 24th, 1876, written by S. W. Riley, who signs himself secretary pro tem. under the heading, Mammoth Copperopolis of Utah, Limited, to C. W. Cook.

Objected to by defendants on the grounds that it is in evidence that S. W. Riley was secretary pro tem. of the Mammoth not a letter written by or on behalf of the trustees. It is shown Copperopolis Company. The heading of the letter is Mammoth Cop-
95 peropolis, of Utah, Limited, the signature is S. W. Riley, pro tem. secretary. Our point is this: That is a transaction between other parties; this is a letter written by the secretary of the company to Mr. Cook and no expressions in this could be used to charge the cestuis que trust or the trustees.

Marked No. 5.

(Plaintiff offers in evidence the paper that has been referred to dated July 15th, '76.

Objected to on the ground that Mr. Cook had no authority to make a statement of account, to charge the trustees of the first debenture holders on their interest with the payment or assuming to pay any debts of the Mammoth Copperopolis Company.

Objection sustained. Plaintiff excepts.)

CHARLES W. COOK recalled:

Q. Who is S. W. Riley?

He is one of the partners of the firm of Sheppard and Riley, solicitors, London.

Q. What relation did they bear to the defendants in this case?

They were solicitors.

Q. While you were acting here for the defendants, with whom did you hold your correspondence in London?

With Mr. Sheppard in the first instance, and with Mr. Riley the latter part of the time.

Q. Had the trustees at that time a secretary; any person who wrote letters for them or acted for them?

They had a secretary in myself until I left; then Mr. Riley or Mr. Sheppard was appointed in my place.

96 Q. To whom did you address your letters—your correspondence to the trustees.

I always addressed it to Mr. Riley or Mr. Sheppard.

Q. Who was your letter for, the letter to which this is an answer?

This letter is intended for the trustees—it is intended——

(Objected to as it contradicts the terms of the instrument itself; it must show to whom it was addressed, and for whom it was intended.)

Q. When you communicated with the trustees from whom did you receive letters in answer?

From Mr. Riley, as the secretary.

Q. Was the Mammoth Coppeoropolis doing any business to your knowledge in London?

Not that I know of. Had not for some time.

Q. Where was the office of the trustees?

When I left it was in Moorgate street.

Q. Where was it with reference to the Mammoth Copperopolis office?

The Mammoth Copperopolis office when I left was at 25 Moorgate street; a company until liquidated is compelled to have an address.

Q. Do you know where the office of the trustees was kept?

At the same place when I left London, 25 Moorgate street.

Q. You were the secretary of the Mammoth Copperopolis Company?

I was.

Q. Had the trustees any secretary while you were there?

Myself.

Q. The secretary of the company acted for the trustees?

Certainly.

Q. Who was the secretary at the time that was written?

97 There was none but myself. I had never been superseded as secretary notwithstanding my coming out here.

Cross-examined by Judge ROSBOROUGH:

Q. You say the company had an office?

It had an office, 25 Moorgate street.

Q. You say they had nothing to do. Don't you know it keeps an office up to this date?

No; I don't.

Q. Don't you know that the Emma Mining Company and others that have gone out of existence, keep an office to this day?

They are obliged to by statute.

Q. Don't you know the trustees paid no rent?

I know the trustees did pay the rent.

Q. Ask you if you had not in your pocket when you came out here this power of attorney for the Mammoth Copperopolis Company?

I had it virtually with me; I don't know that I had it in my pocket.

Q. The company had not gone out of existence?

Not legally, as I understand it, but virtually.

Q. The company was exercising corporate powers and performing corporate acts?

The petition had not been granted when I left London. The petition had been filed by Mr. S. W. Valentine but had not been liquidated that I am aware of.

Q. Your idea is when the title to property goes out of the corporation it goes out of existence?

No, sir.

Q. You say the company had nothing at the time of the execution of the power of attorney?

98 No; the company had nothing then.

Q. Do you know that it had held the Mammoth Copperopolis mine, mill, and furnace, subject to mortgage?

Yes, sir.

Q. Don't you know it contemplated, at the time you came out here, carrying on business still?

No, sir; they never intended to do any more business.

Q. Why wasn't it wound up?

That was some private arrangement that I cannot inform you.

ROSBOROUGH. We still insist on our objection that it is not written by or on in behalf of the company.

(Objection overruled; defendants except.)

Considered read.

Plaintiff rests.

Defendants offer in evidence paper marked Exhibit A, being the instructions accompanying the power of attorney; being the paper referred to in the power of attorney of the trustees with a printed circular annexed to and made part of the instructions, and dated August 14th, 1874.

Defendants offer in evidence papers marked B, being a letter from defendant Claud Hamilton to Charles William Cook, dated 14th of August, '74; Exhibit C being a letter in answer to the foregoing from Charles William Cook to said Hamilton, dated August 14th,
99 1874; Exhibit D, being letter from Charles William Cook to Lord Claud Hamilton and John Elliott, esq., dated Aug. 13th, 1874.

Defendants offer in evidence judgment-roll in Wells, Fargo & Company against Mammoth Copperopolis of Utah, Limited, file number 1163, showing an action commenced in this court on the 9th day of January, 1874. Attachment issued the same day, and levied on the property of the company on the 10th day of January, 1874.

(Objected to as irrelevant and immaterial. Objection overruled. Plaintiff excepts.)

Defendants offer in evidence a sheriff's deed to Henry Wadsworth, dated the 23rd of June, 1875, in pursuance of the judgment marked Exhibit E.

(Same objection by plaintiff. Same ruling, and plaintiff excepts.)

Defendants offer in evidence deed from Henry Wadsworth to Claud Hamilton and John Elliott, their heirs and assigns, in trust for their co-guarrantors, dated 2nd of July, 1875, marked Exhibit F.

(Same objection, ruling, and exception.)

Defendants rest.

Case submitted without argument.

A. S. PATTERSON, *Reporter.*

The said several Exhibits 1, 2, 3, 4, & 5 on the part of the plaintiff, and A, B, C, D, E, & F on the part of the defendants, were given
100 in evidence, and copies thereof correspondingly marked are hereto annexed and made part hereof.

The defendant also produced in evidence the judgment-roll of this court, filed No. 1163 as Exhibit E, being the case of Wells, Fargo & Co. vs. said Mammoth Copperopolis of Utah, Limited, showing a judgment entered in this court on the 21st day of January, 1874, in favor of such plaintiff and against such defendant for $13,940.15 debt and $20 costs; also the writ of attachment therein issued on the 10th January, '74,; also the execution issued out of this court on said judgment to the sheriff of Juab County, Utah, on which said property of such defendant was sold on the 10th day of September, 1874, by said sheriff, all of which are referred to & made a part of this statement. Exhibits B, C, & D, are the same which were identified by the witness Cook as letters marked 2, 3, & 4.

Said defendants also annexed to this statement and made the same a part hereof a specification of the grounds on which they rely on the motion for a new trial, marked Exhibit G, in which they specify the particulars in which they urge that the evidence is insufficient to justify

the findings and decision of the court, and also the particular errors in law upon which they will rely.

ROSBOROUGH & MERRITT.
Att'ys for s'd Defendants.

101 EXHIBIT D.

Trust mortgage, put in evidence by pl'ff.

This indenture, made the 19th day of August, 1873, between the Mammoth Copperopolis of Utah, limited, duly incorporated on the 8th day of December, 1871, under the provisions of the companies' acts, 1862 and 1867, as a company, limited by shares, whose registered office is situated No. 25 Moorgate street, in the city of London, hereinafter called the company, of the one part, and the Right Honorable Lord Claud Hamilton, M. P., of No. 19 Eaton square, in the county of Middlesex, and John Elliott, of Fernside Bassett, in the county of Southhampton, esquire, of the other part.

Whereas, under and by virtue of the several deeds and documents, the dates and other particulars whereof are set forth in the first and second parts of the first schedule hereto, the company is *siezed* and possessed of and well entitled to the freehold mining property, known as the Armstrong claim on the Mammoth vein, and sometimes called the Copperopolis of Utah, situate in Tintic mining district, county of Juab, in the Territory of Utah, in the United States of America, which is more particularly described in the first part of the second schedule hereto, together with all the privileges and rights in the second part of the second
102 schedule hereto particularly mentioned, and all other, the privileges and rights appertaining to the said property subject as in the first part of the second schedule hereto is mentioned, and are also possessed of and well entitled to the mills, furnaces, machinery, plant, and other effects in or upon the same property, and held, used, and enjoyed in connection therewith. And whereas, with a view to defray the expenses to be incurred in the erection of a mill upon the said property, the directors of the company, in pursuance of the powers for that purpose conferred upon them by the articles of association of the company, some time since determined to raise a sum not exceeding in the whole 20,000 pounds, by the lease of debentures for 10 pounds each, bearing interest at the rate of 15 pounds per centum per annum on the amount thereof for the time being paid up. And whereas certain of the said debentures have been already issued, and the aggregate amount of the principal monies and interest payable upon all such debentures, as aforesaid, has been secured by a first charge by way of mortgage on all the present and future mining property of the company in Utah, and it hath been agreed that in accordance with an agreement in that behalf
103 entered into upon the creation of such charge these presents shall be executed in substitution therefor, and for the purpose of securing payment of the said debentures, and any other debentures hereafter to be issued in lieu thereof in manner hereinafter appearing: Now this indenture witnesseth, that in pursuance of such determination, and in consideration of the premises the company do hereby grant and assign unto the said Lord Claud Hamilton and John Elliott, their heirs, executors, administrators, and assigns, respectively, all that, the mining claim and property known as the Armstrong claim on the Mammoth vein, and sometimes called the Copperopolis of Utah, situate in Tintic mining district, county of Juab, in the Territory of Utah, in the United

States of America, in the first part of the second schedule hereto more particularly described, with the privileges and rights in the second part of the said second schedule hereto particularly mentioned, and all other the privileges and rights appertaining to the said mining claim and property, and all and singular the mines, minerals, erections, buildings, mills, milling-gear, furnaces, machinery, plant, whether fixed or moveable, and other effects, in or upon the same claim and property and held,
104 used, or enjoyed in connection therewith, and all the estate, right, title, interest, claim, and demand by the company in, to, or upon the same premises; to have and to hold the same mining claim and property, privileges, rights, mines, minerals, erections, buildings, mills, milling-gear, furnaces, machinery, plant, whether moveable or immoveable effects, and other the premises hereinbefore expressed to be hereby granted and assigned respectively unto and to the use of the said Lord Claud Hamilton, and John Elliott, their heirs, executors, administrators, and assigns, respectively, subject as in the first part of the second schedule hereto is mentioned; upon trust that the said Lord Claud Hamilton and John Elliott, or the survivors of them, of the heirs executors, or administrators of such survivor, their or his assigns, hereinafter called the trustees or trustee, shall permit the company, their successors, or assigns to hold and enjoy all the same premises, and to carry on mining operations thereon and therewith, until default shall be made in payment of some principal, money, or interest secured by any of the said debentures of the company for a period of six calendar months
105 after the time by such debenture fixed for payment of the same; and from and after such default as aforesaid, shall, subject to the proviso hereinafter contained, upon the request in writing of any holder of a debenture of the company whose principal, money, or interest shall be so in arrear, but without any further consent on the part of the company, their successors, or assigns, enter upon and take possession of the said claim, property, and premises; and shall, upon the like request, sell and dispose of the same, or any part or parts thereof respectively, either together or in parcels, and either by public auction or private contract, with power upon any such sale, to make any stipulations as to title or evidence of title or otherwise, which the trustees or trustee shall deem proper, and also to buy in or rescind or vary and contract for sale, and to resell without being liable for any consequent loss, and for the purposes aforesaid, or any of them, to execute and do all such assurances and acts as they or he shall think fit. Provided, always, that on receiving any such request as aforesaid, the trustees or trustee shall give written notice thereof to the directors of the company, and shall not enter or sell in pursuance of such request if the directors shall prove to the satisfaction of the trustees or trustee, pay-
106 ment of the principal and interest so in arrear, within six calendar months next after such notice shall have been given to them; provided, also, that, upon any sale purporting to be made in pursuance of the aforesaid trust in that behalf, the purchaser or purchasers shall not be bound to see or inquire whether any such request as aforesaid shall have been made or any such notice as aforesaid given, or whether any default has been made by the company in the payment of any principal, money, or interest secured by any such debentures as aforesaid, or as to the necessity or expediency of the stipulations, subject to which such sale shall have been made, or otherwise, as to the propriety or regularity of such sale, and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as

far as regards the safety and protection of the purchaser or purchasers, be deemed to be within the aforesaid trust in that behalf, and be valid and effectual accordingly; and the remedy of the company, their successors, or assigns, in respect of any breach of the clause or provision lastly hereinbefore contained, or of any impropriety or irregularity whatsoever in any such sale, shall be in damages only; provided, also, that upon any such sale as aforesaid the receipt of the trustees or trustee for the purchase-moneys of the premises sold shall effectually
107 discharge the purchaser or purchasers therefrom, and from being concerned to see to the application, or being answerable for the loss or misapplication thereof. Provided, also, that the trustees or trustee shall, out of the purchase-monies to arise from any such sale as aforesaid, in the first place reimburse themselves or himself, or pay or discharge the expences incurred in or about such sale, or otherwise, in respect of the premises; and in the next place pay the monies for the time being owing for principal and interest on the debentures of the company, and shall invest the surplus, if any, of such purchase-monies in their or his names or name, in any of the public stocks or funds of Great Britain, or upon government or real securities in England or Wales, with power to vary or transpose such investments for other of the same or like nature, at their or his discretion; and shall, by and out of the annual income of such investments, or if the same be insufficient for the purpose, by and out of the capital thereof, or a competent part thereof, raise such sum or sums of money as shall from time to time be required to keep down the interest on the outstanding debentures of the company, and shall pay off such debentures as the same shall fall due, and shall hold the residue of such investments in trust for the company, their successors, or as-
108 signs; and shall from time to time accumulate the unapplied income of such investments as aforesaid, by investing the same, and the resulting income thereof, in or upon any such description of investments as aforesaid, and shall stand possessed thereof upon the same trusts as are hereby declared concerning the investments, from whence such accumulation shall have arisen. Provided, also, that if the surplus of the purchase-monies to arise from any such sale or sales, as aforesaid, shall be insufficient to pay in full the principal monies received by the debentures of the company, which shall be due at the date of such sale or sales, and the interest due thereon; and to provide a fund for the payment of interest on such of the debentures of the company as shall not then be due, such surplus purchase-monies shall be apportioned rateably, and without preference or priority, among all the holders of the debentures of the company, according to the amount of their debentures, and be paid to them accordingly, without regard to the time at which the principal monies thereby secured become or will become due. Provided, also, that if the surplus of the purchase-monies to arise from any such sale or sales, as aforesaid, shall be sufficient to pay in full the principal monies secured by the debentures of the company, which shall be due at the date of such
109 sale or sales, and the interest due thereon, and to provide a fund for the payment of the principal monies and interest, secured by such of the said debentures as shall not then be due the trustees or trustee may, at any time after such sale or sales, pay off any debenture-holder of the company, who shall be willing to accept the same, the amount payable to him for principal and interest, of the date of such payment, without waiting for the time at which the principal money secured by the debenture or debentures held by him will become pay-

able, according to the terms thereof. Provided, also, that after the trustees or trustee shall have entered upon and taken possession of the said premises, and until the same shall be sold under the trust in that behalf hereinbefore contained, they and he may carry on mining operations on and with the said premises in such a manner as they or he shall think fit, and may, for that purpose, employ such agents, servants, workmen, and others, upon such terms and at such salaries as they or he shall think proper, and may repair, insure, and manage the same premises, and every part thereof, and act, in relation thereto, with all such powers, authorities, and discretions as if they or he were or was absolute owners or owner thereof, and without being responsible for any damage or loss which may happen thereby, and shall, by and out of the
110 monies which shall come to their or his hands by carrying on such mining operations, pay and discharge the expences so incurred by them or him, or otherwise in relation to the premises and then pay and apply such monies in or towards satisfaction of the interest on the debentures of the company for the time being *pari passie* and without any preference or priority, and shall apply the residue, if any, of such monies in the same manner as hereinbefore provided with respect to the unapplied income of any investments standing in their or his names or name as aforesaid. And the compay do hereby for themselves and their successors, covenant with the said Lord Claud Hamilton and John Elliott, their heirs, executors, administrators, and assigns, respectively, that the aggregate amount, not exceeding, in the whole, 20,000 pounds of the debentures issued or to be issued, as hereinbefore mentioned, and any debentures to be issued in lieu thereof, respectively, shall be a first charge on the premises hereinbefore expressed to be hereby granted and assigned, respectively, and shall take precedence over all monies which may be hereafter raised by the company by any means whatsoever; and that as between the several holders thereof, the said debentures shall rank *parri passie* with-
111 out reference to priority by reason of date or otherwise; and also that the company or their successors will at all times keep a correct register of all the debentures of the company for the time being outstanding, showing the date when, and the amount and term for which each debenture is issued, and the number thereof; and that the said register shall, at all reasonable times, be open to the inspection of the trustees or trustee and the debenture holders; and also that the company and their successors will at all times during the continuance of this present security, keep all erections, buildings, mills, milling gear, furnaces, machinery, plant, and effects which may for the time be in or upon, or used in the working of the said claim, in good and substantial repair and working order and insured against loss or damage by fire in a sum or sums not less in the whole than 5,000 pounds, and will duly and punctually pay the annual premiums, duty, and other sums of money necessary for keeping on foot the policy or policies of such insurance; and also that the company now have power to grant and assign all and singular the said premises hereinbefore expressed to be hereby granted and assigned respectively, unto and to the use of the said Lord Claud Hamilton and John Elliott, their heirs, executors, administrators, and assigns, respectively, subject as and in manner-
112 aforesaid. And also, that, subject as aforesaid, if default shall be made in payment of any principal money or interest secured by any such debenture as aforesaid, the trustees or trustee may enter into and upon and take possession of all or any of the said premises, and the same thenceforth hold and continue mining

operations thereon and therewith without any lawful interruption or disturbance by the company or any person; and that free and discharged from or otherwise by the company or their successors sufficiently indemnify against all estates, incumbrance, claims, and demands whatsoever. And further, that the company and their successors and every person having, or lawfully or equitably claiming, any estate, right, title, or interest in or to the said premises, or any of them, will, at all times, at the cost, until sale of the company or their successors, and afterwards of the person or persons requiring the same, execute and do every such lawful assurance and thing for the further or more perfectly assuring all or any of the said premises unto and to the use of the said Lord Claud Hamilton and John Elliott, their heirs, executors, administrators, and assigns, respectively, according to the nature of the property subject, as and in the manner aforesaid, as by them shall be reasonably required; provided, also, that if the
113 said trustees herein constituted, or either of them, or any trustees or trustee to be appointed as hereinafter mentioned, shall die or desire to be discharged, or refuse, or become incapable to act in the trusts aforesaid before the same shall be fully performed, then, and so *after* as the same shall happen, the surviving or continuing trustees or trustee, for the time being; and for this purpose every retiring or refusing trustee shall, if willing to act in the execution of this power, be considered a continuing trustee, with the sanction of the board of directors of the company, testified by a resolution thereof, may appoint a new trustee or new trustees in the stead of the trustee or trustees so dying or desiring to be discharged, or refusing, or becoming incapable to act. And, upon every or any such appointment, the number of trustees may be augmented or reduced, and upon every such appointment the premises, the *the* time being, subject to the trusts of these presents, shall be assured and transferred, so as that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustees or trustee, or solely, as the case may require, and every such new trustee shall, as well before as after such trust premises shall have become so vested, have the same power, authorities, and discretions as if had been hereby originally appointed a trustee.

In witness whereof the said Mammoth Copperopolis of Utah,
114 Limited, have hereunto caused their common seal to be affixed, and the said parties of the second part have hereunto set their hands and seals the day and year first above written.

The first schedule above referred to.

PART I.

1870, March 5th. Conveyance of this date made between Alfred Walton of the first part and Murat D. Harmon of the second part.

1870, September 6th. Conveyance of this date made between Murat D. Harmon of the first part and Stephen B. Moore, of the second part.

1870, December 7th. Conveyance of this date made between Murat D. Harmon of the first part and William H. Chinn of the second part.

1871, April 6th. Conveyance of this date made between Darwin Walton of the first part and Noah Armstrong of the second part.

1871, April 28th. Conveyance of this date made between William H. Chinn of the first part and Charles Crismon of the second part.

1871, May 12th. Conveyance of this date made between Charles Crismon, jr., of the first part, and Elias C. Atkins of the second part.

1871, May 18th. Conveyance of this date made between Robert Naylor of the first part and Elias C. Atkins of the second part.

1871, May 24th. Conveyance of this date made *made* between Elias C. Atkins of the first part and Noah Armstrong of the second part.

115 1871, May 24th. Conveyance of this date made between Noah Armstrong of the first part and Elias Atkins of the second part.

1871, May 24th. Conveyance of this date made between Noah Armstrong of the first part and Geo. B. Sands of the second part.

1871, May 27th. Power of attorney of this date from Elas C. Atkins and George B. Sands to Noah Armstrong.

1871, June 3rd. Conveyance of this date made between Stephen B. Moore of the first part and Noah Armstrong, George B. Sands, and Elias C. Atkins of the second part.

1871, July 18th. Power of attorney of this date from Elias C. Atkins and Daniel Sands to Noah Armstrong.

1871, Aug. 10th. Conveyance of this date made between George B. Sands of the first part and Daniel Sands of the second part.

1872, January 31st. Conveyance of this date made between Daniel Sands, Elias C. Watkins, and Noah Armstrong of the first part and Theodore F. Tracy, as trustee for the use and benefit of the Mammoth Copperopolis of Utah, Limited, corporation of London, of the second part.

1872, January 31st. Agreement of this date annexed to last by schedule indenture made between Theodore F. Tracy of the first part and the Mammoth Copperopolis of Utah, Limited, of the second part.

1872, February 29th. Power of attorney of this date from Noah
116 Armstrong and Hannah, his wife, Elias C. Atkins and Sarah F. Atkins, his wife, and George B. Sandes to Charles F. Smith to sign a quit-claim deed to Theodore F. Tracy, as trustee for the Mammoth Copperopolis of Utah, Limited.

1872, July 9th. United States patent No. 403, being mineral certificate No. 9, issued from General Land Office of the United States of America, granting unto Noah Armstrong, Elias C. Atkins, and George B. Sandes the premises described in the plat thereon as lot No. 37, and being the claim of Noah Armstrong, Elias C. Atkins, and George B. Sandes upon the Mammoth mine, East Tintic district, Juab County, Utah Territory.

1872, Aug. 10th. Conveyance in trust of this date made between Noah Armstrong and Hannah, his wife, Elias C. Atkins and Sarah Atkins, his wife, and George B. Sandes of the first part, Theodore F. Tracy of the second part, and the Mammoth Copperopolis of Utah, Limited, of the third part.

1873, May 17th. Conveyance of this date made between Noah Armstrong and Hannah Armstrong, his wife, Elias C. Atkins and Sarah F. Atkins, Theodore F. Tracy and Augusta E. Tracy of the first part, and The Mammoth Copperopolis of Utah, Limited, of the second part.

PART II.

1873, May 15th. Conveyance of this date made between Samuel Win-
ter Valentine of the first part, and the Mammoth Copperopolis
117 of Utah, Limited, of the second part.

The second schedule above referred to.

PART 1.

All that certain mining claim, right, title, and property on that certain vein or lode, ledge, or deposit of quartz and other rock in place bearing gold, silver, copper, and other valuable metals and minerals known as the claims of Noah Armstrong, Elias C. Atkins, and George B. Sandes upon the Mammoth mine, measuring one thousand linear feet upon the Mammoth lode, being survey No. 1, mineral district No. 6, and mineral entry No. 9, in the series of the land office at Salt Lake City, Territory of Utah, and designated by the surveyor-general as lot No. 37, forming a portion of the unsurveyed public domain, situate, lying, and being in the East Tintic mining district, in the county of Juab and Territory of Utah, in the district of lands subject to sale at Salt Lake City, and bounded, described, and platted as follows, with magnetic variations at 16 degrees 30 minutes east, to wit: Beginning at section post 4x4 in mound of stones marked No. 1, situate at the southeast corner of the claim from which a red pine post 6x6 in. mound of stone conspicuously located on the western side of Mammoth ridge, and designated United States mineral monument No. 1; bears north one degree 50 min's west the distance of 946 feet;
118 thence from said post No. 1 north one degree 57 min's west 785 feet to a point opposite a shaft 5 feet by 6 feet and forty-four feet deep, eight hundred feet to corner No. 2, cedar post 4 x 4 in mound of stones from which said United States mineral monument No. 1 bears north 146 feet; thence from said corner No. 2 north 200 feet to corner No. 3 cedar post 4 x 4 in mound of stones, from which said United States mineral monument No. 1 bears south at the distance of forty-four feet; thence from said corner No. 3 west 200 feet to corner No. 4 cedar posts 4 x 4 in mound of stones; thence south 200 feet to corner No. 5 cedar post 4 x 4; thence south 1 deg. 57 min's east 286 feet to Harmon's Gulch, 800 feet to corner No. 6 cedar post 4 x 4; thence east 200 feet to the place of beginning; containing four acres and fifty-nine hundredths of an acre of land, more or less, as represented by the plat thereof annexed to the patent issued by the Government of the United States on the 26th day of July, 1872, being No. 403, mineral certificate No. 9. The said mining claims hereinbefore described as lot No. 37, embracing a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not therein expressly excepted from the said patent, and of one thousand linear feet of the said mammoth lode, vein, ledge, or de-
119 posit for the length hereinbefore described throughout its entire depth, although it might enter the land adjoining. And also of all other veins, lodes, ledges, or deposits throughout their entire depth the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface, extended downwards vertically, although such veins, ledges, lodes, or deposits in their downward course might so far depart from a perpendicular as to extend outside the vertical side lines of said survey, as the same premises are held subject to the provisions and stipulations contained in the said patent.

PART 2.

All those certain springs, water privileges and rights, situate, lying, and being about three miles and one-half of another mile in a southerly direction from Diamond City, in Tintic district, county of Juab, Terri-

tory of Utah, and located, recorded, and known as the Vincent Springs, Duck Springs, Steamboat Springs, and Porcupine Springs; the said springs being duly recorded on the records of the said mining district, and being the premises comprised in the indenture of the 15th day of May, 1873, in the second part of the first schedule mentioned, and all singular, other if any, the mining claims, property, privileges, and rights whatsoever by the patent and indenture mentioned in the
120 first and second parts of the first-above written schedule, or otherwise granted to the company, or any person or persons in trust for them.

COMMON SEAL OF THE MAMMOTH COPPEROPOLIS OF UTAH, LIMITE'. Sealed with the common seal of the Mammoth Copperopolis of Utah, Limited, by virtue of a resolution of the board of directors passed the 14th day of August, 1873.

This 19th day of August, one thousand eight hundred and seventy-three, in presence of—

HENRY WILLIAM SPRATT,
C. COOCH, *Directors.*
Countersigned: CHAS. WM. COOK, *Secretary.*
CLAUD HAMILTON. [L. S.]
JOHN ELLIOTT. [L. S.]

Signed, sealed, and delivered by the above-named Lord Claud Hamilton and John Elliott, in the presence of—

SAM'L WM. RILEY,
38 *Moorgate street, London, Solicitor.*

I, John Venn, of the city of London, notary public, duly admitted and sworn, practicing in the said city, do hereby certify and attest that I was this day present at the registered offices of the Mammoth Copperopolis of Utah, Limited, situate at No. 25 Moorgate street, in the said city of London, and did see the common seal of the said Mammoth Copperopolis of Utah affixed to the foregoing deed of trust, and that the seal so affixed is the genuine seal of the said Mammoth Copperopolis of Utah, Limited.

That at the same time and place I did also see Henry William
121 Spratt and Charles Cooch, esquires, two of the directors of the said Mammoth Copperopolis of Utah, Limited, and Charles William Cook, esquire, the secretary thereof, sign the said deed of trust.

That at the same time and place I did also see the Right Honorable Lord Claud Hamilton, M. P., and John Elliott, esquire, parties to the said deed of trust, sign, seal, and deliver the same, and that Samuel William Riley, esquire, of No. 38 Moorgate street, aforesaid, solicitor, was also present, and signed as a witness in my presence, and that the signatures "Henry William Spratt," "C. Cooch," "Chas. Wm. Cook," "Claud Hamilton," "John Elliott," and Sam'l Wm. Riley were severally subscribed at the foot of said deed of trust are of the respective proper handwriting of the said Henry Wm. Spratt, Charles Cooch, Lord Claud Hamilton, John Elliott, and Sam'l William Riley and Charles William Cook.

Whereof an act being required, I, the said notary, have granted these presents under my notarial firm and seal to serve and avail when and where need may require.

Done and passed in London the 19th day of August, in the year of our Lord one thousand eight hundred and seventy-three.

JOHN VENN, NOTARY PUBLIC, LONDON. JOHN VENN,
Not. Pub.

122 E Pluribus Unum.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA, LONDON.

I, Johua Nunn, vice and deputy consul-general of the United States of America for Great Britain and Ireland, in London, do hereby make known and certify to all whom it may concern that Johnn Venn, who hath signed the annexed certificate, is a notary public, duly admitted and sworn and practicing in the city of London aforesaid, and that to all acts by him so done, full faith and credit are and ought to be given in judicature and thereout.

UNITED STATES CONSULATE-GENERAL, LONDON. In testimony whereof, I have hereunto set my hand and affixed the seal of the consulate-general of the United States, at London aforesaid, *aforesaid* this 19th day of August in the year of our Lord one thousand eight hundred and seventy-three, and in the 98th year of the Independence of the United State'.

J. NUNN.

We, John Andrew Black and Charles Pitts, of No. 38 Moorgate street, in the city of London, clerks to Messrs. Sheppard and Riley, of the same place, solicitors, do hereby certify that the foregoing copy, deed of trust, notorial certificate of Mr. John Venn, and certificate of
123 the verification of the vice consul-general of the United States of America, contained on this and the eleven preceding sheets of brief paper are true copies of the original deed of trust, bearing date the nineteenth day of August, one thousand eight hundred and seventy-three, and made between the Mammoth Copperopolis of Utah, Limited, of the one part and the Right Honorable Lord Claud Hamilton, M. P., and John Elliott, esquire, of the other part, of the said notarial certificate of the said John Venn, dated the 19th day of August, one thousand eight hundred and seventy-three, and of the certificate of verification of the vice consul-general of the United States of America, dated the 19th day of August, one thousand eight hundred and seventy-three. We having this day examined and compared the same with the said original deed of trust, notorial certificate, and consular verification.

Dated this 1st day of October, 1873.

JOHN ANDREW BLACK,
CHARLES PITTS,
Clerks to Messrs. Sheppard and Riley, Solicitors, 38 Moorgate Street, London.

124 EXHIBIT 1.

To all to whom these presents shall come, the Right Honorable Claud Hamilton, commonly called Lord Claud Hamilton, of No. 19 Eaton Square, in the county of Middlesex, in the kingdom of Great Britain, and John Elliott, of Fernside Baosett, in the county of Southampton, also in the kingdom of Great Britain, esquire, send greetings: Whereas, the Mammoth Copperopolis of Utah, Limited, hereinafter called the said mining company, was duly incorporated, with limited liability, on the 8th day of December, one thousand eight hundred and seventy-one, under the provisions of the companies acts, 1862 & 1867; and whereas, by a notice, dated on or about the 9th day of January, one thousand eight hundred and seventy-three, issued by the share-holders of the said company, inviting applications for debenture bonds of ten

pounds each, it was stated "That to secure to the debenture holders a first mortgage upon the property of the company, a deed of mortgage would be duly executed to the said Right Honorable Lord Claud Hamilton and John Elliott, esq'r, the chairman and deputy chairman of the company, who have consented to act for and on behalf of the debenture holders as trustees. And whereas, by an indenture dated the 19th day of August, one thousand eight hundred and seventy-three, made
125 between the said Mammoth Copperopolis of Utah, Limited, of the one part, and the said Lord Claud Hamilton and John Elliott of the other part, and recorded on the 30th day of October, one thousand eight hundred and seventy-three, the property of the company was mortgaged and vested in the said trustees, for the purpose of securing the payment of such debentures and all interest thereon; and whereas the works have been for some time stopped at the company's mine in Utah, and there has been a default in payment of some of the interest due on the said debentures; and whereas, it has been deemed expedient that Charles William Cook, of Douglass House, Tallington Park, Upper Holloway, in the county of Middlesex, in the said kingdom of Great Britain, should proceed to the United States of America, and act there as the duly authorized agent of said Lord Claud Hamilton and John Elliott, as trustees for the first debenture holders:

Now, these presents witness that the said Lord Claud Hamilton and John Elliott, as such trustees for the debenture holders hereinafter called the first debenture holders, and as mortgagees as aforesaid, do hereby nominate, constitute, and appoint the said Charles William Cook to be the attorney and duly authorized agent of them, the said Lord Claud Hamilton and John Elliott, as such
126 trustees and mortgagees as aforesaid, in their names and as their acts and deeds, or otherwise, should he deem it expedient so to do to accept and take possession of the mines, works, and property of the said Mammoth Copperopolis of Utah, Limited, hereinafter called the said company, in Utah, and in their names to do and transact all acts, matters, and things, and make and carry out all arrangements and to execute and give all deeds, releases, receipts and other instruments, to bring or defend any actions or suits, or other proceedings, and to compromise the same as he may deem expedient, and to use and perfect all such ways and means, and do all such other acts as he may deem necessary or proper to be done or affected in the interests of the said Lord Claud Hamilton and John Elliott, as such trustees and mortgagees for the first debenture holders as fully and effectually as they, the said Lord Claud Hamilton and John Elliott could or might do if they were personally present, subject only to the present written instructions given by them to the said Charles William Cook, and such varied or other instructions as he may from time to time receive from them, the said Lord Claud Hamilton and John Elliott, as such trustees and mortgagees for the first debenture holders as afore-
127 said, hereby agreeing to ratify and confirm all and whatsoever the said Charles William Cook shall lawfully do or cause to be done in or about the premises by virtue of these presents; and also, if necessary, to enroll or register these presents.

In witness thereof the said Lord Claud Hamilton and John Elliott have hereunto set their hands and seals this 13th day of August, in the year of our Lord one thousand eight hundred und seventy-four.

CLAUD HAMILTON. [L. S.]
JOHN ELLIOTT. [L. S.]

Signed, sealed, and delivered by the above-named Claud Hamilton and John Elliott in the presence of—

MORRIS KING.

A. F. SHEPPARD.

Solicitor, 38 *Moorgate street, London.*

Acknowledged & certified before John Henry Grain, a notary public for the city of London, on the 13th day of August, 1874. Certificate of Josiah Nunn, vice and deputy consul-general of the United States for Great Britain and Ireland, that John Henry Grain was a notary public for the city of London, and due faith ought to be given to his signature, &c.

128 EXHIBIT 2.

To all to whom these presents shall come, the Right Honorable Claud Hamilton, commonly called Lord Claud Hamilton, of No. 9, Eaton Square, in the county of Middlesex, in the kingdom of Great Britain, and John Elliott, of Fernside Bassett, in the county of Southhampton, also in the kingdom of Great Britain, esquire, send greeting:

Whereas the Mammoth Copperopolis of Utah, Limited, hereinafter called the said mining company, was duly incorporated with limited liability on the 8th day of December, 1871, under the provisions of the companies acts, 1862 and 1867; and whereco, by a notice dated on or about the 9th day of January, 1873, issued to the share-holders of said company inviting applications for debenture bonds of ten pounds each, it was stated, that to secure the debenture holders a first mortgage on the property of the company would be executed to the Right Honorable Lord Claud Hamilton and John Elliott, esq'r., the chairman and deputy chairmen of the company, who here assented to act for and on behalf of the debenture holders, as trustees; and whereas by an indenture dated the 19th day of August, 1873, made between the said Mammoth Copperopolis of Utah, Limited of the one part, and the said Lord Claud Hamilton and John Elliott of the other part, and recorded on the 3d day of October, 1873, the property of the company was
129 mortgaged to and became vested in said trustees for the purpose of securing the payment of such debentures and all interest thereon. And whereas, it has become necessary, for the purpose of the company, to raise a further fund, to be called the "Second debenture fund," and the said Lord Claud Hamilton and John Elliott have, by resolutions of the board of directors, been duly appointed to be trustees of the said second debenture fund, for and on behalf of the subscribers to the same. And whereas it has been deemed expedient that Charles William Cook, of Douglass House, Tollington Park, Upper Holloway, in the county of Middlesex, in the kingdom of Great Britain, should proceed to the United States of America and act there as the duly authorized agent of the said Lord Claud Hamilton and John Elliott, as such trustees of the second debenture fund, as aforesaid: Now, therefore, these presents witness that the said Lord Claud Hamilton and John Elliott, as such trustees of the second debenture fund, as aforesaid, do hereby nominate, constitute, and appoint the said Charles William Cook to be the attorney and duly authorized agent of them, the said Lord Claud Hamilton and John Elliott, as such trustees of the second debenture fund, and for the subscribers thereof, as aforesaid, to proceed to the United States of America, and there, in the names of the said Lord Claud Hamilton and John Elliott, and as their

130 acts and deeds, or otherwise to do and transact all acts, matters, and things, and to make and carry out all arrangements, execute and give all deeds, releases, receipts, and other instruments, to bring or defend any action, suits, or other proceedings, and to compromise the same, as he may deem expedient, and to use and perfect all such ways and means, and to do all such other acts as he may deem necessary or proper to be done or effected for the purpose of carrying out the business and objects of the said second debenture trust as fully and effectually, to all intents and purposes, as the said Lord Claud Hamilton and John Elliott could or might do if they were personally present, subject only to the written instructions given by them to the said Charles William Cook, and to such varied and other instructions as he may from time to time receive from them, the said Lord Claud Hamilton and John Elliott, as such trustees of the second debenture fund, and for the subscribers thereof, hereby agreeing to ratify and confirm all and whatsoever the said Charles William Cook shall lawfully do or cause to be done, in or about the premises, by virtue of these presents, and also, if necessary, to enroll or register these presents.

In witness whereof the said Lord Claud Hamilton and John Elliott, have hereunto set their hands and seals this 13th day
131 of August, 1874.

CLAUD HAMILTON. [SEAL].
JOHN ELLIOTT. [SEAL].

Signed, sealed, and delivered by the above-named Claud Hamilton and John Elliott, in the presence of—

NORRIS KING.
A. F. SHEPHARD,
Sol'r, 38 Moorgate street, London.

Acknowledged before, and certified by, John Henry Grain, a notary public for the city of London, on August 13th, 1874.

On 13th August, 1874, Josiah Nunn, vice and deputy consul-general of the United States, at London, certifies to the official character of John Henry Grain, as notary, &c., &c., &c., &c., &c.

EXHIBIT "A."

Instructions to agent.

THE MAMMOTH COPPEROPOLIS OF UTAH, LIMITED,
25 *Moorgate street, London, E. C.,* 14 *August,* 1874.

C. W. COOK, Esq'r.:

DEAR SIR: We herewith hand you a printed copy of the conditions under which we, as trustees, have received the monies subscribed according to such conditions. The amount immediately at our disposal to be used in settling with the creditors, is about 6,000 pounds.

You are to bear in mind that no part of the 6,000 pounds subscribed, except that necessary for your expenses in America, is to be used or pledged, unless the property can be released from its difficulties,
132 either by working the mine to clear the debts, or by a settlement of them at a sum that will leave 3,000 pounds as working capital—

1. On arriving at Salt Lake City ascertain the position of affairs, and if Wells, Fargo and Co. have purchased the mine, telegraph the word "Fargo," and let the amount follow.

2. If any one else has purchased the property, telegraph the word "stranger," and let amount follow.

3. If there is any prospect of the working the mine so as to pay the creditors with proceeds, telegraph the word "mineral."

4. If possible you should arrange with Wells, Fargo and Co. to take up bonds in the second issue of debentures on the same conditions as the present subscribers to the remaining 50 per cent. of their debt against the company.

5. Ascertain from the records the existing amount of liens legally held on the property, and either through Wells, Fargo & Co., or such other agent as you may employ, purchase, and take over on assignment for the trustees such liens; duly recording the assignment at an average of net more than 50 per cent. of par, providing the sum required does not exceed 1,500 pounds to 2,000, in order to obtain possession of the mine for the trustees, which latter amount, with 1,500 pounds paid to Wells, Fargo & Co., would absorb 3,500 pounds, leaving 2,500
133 pounds or thereabouts as working capital to carry on operations at the mine for the trustees.

6. Should you be able to effect the above-named arrangement with the creditors, you will telegraph as follows:

7. In dealing with Wells, Fargo & Co., should you find the amount of their claim to exceed 3,000 pounds, and consequently it would require more then 1,500 pounds to pay them 50 per cent., you will telegraph the exact total amount of their claim in figures after the word "Hamilton."

8. If they will take 1,500 pounds and the balance, whatever it may be, in 12 months, you will the word "King."

9. If they will take 1,500 pounds on the behalf of their claim in cash and the remainder in second debentures, use the word "Spratt"—creditors' and legal liens on the property—after ascertaining the total amount of legal liens held on the property not including Mr. Valentin's mortgage, you will, if necessary, telegraph total amount in figures after the word "Elliott." If you cannot ascertain the whereabouts of persons holding a portion of such liens, telegraph the amount of such portion after the word "Cooch." If having ascertained the above particulars, you can settle with the creditors and obtain possession of the mine to
134 work for the trustees by paying a certain sum, telegraph the said certain sum in figures after the word "Settle." This is an illustration of a full telegraph: "Elliott," 5,000; "Cooch," 2,000; "Settle," 1,000, would mean "Total amount of legal liens on 5,000 pounds; cannot et *b*at persons holding 2,000 pounds, but can settle the three thousand pounds for 1,000 pounds cash, leaving the 2,000 pounds to be afterwards dealt with. Can settle with Wells, Fargo & Co. as per instructions; can settle all liens that appear to be recorded on the property and obtain possession under the lease, and have 1,000 pounds for working expenses. "Brass."

Do. do. 1,500, Copper.

Do. do. 2,000, Iron.

Do. do. 2,500, Gold.

Do. do. 3,000, Silver.

Amount of claims by creditors not holding liens against the company so far as can be ascertained, telegraph amount in figures after word "Riley."

Settle with Wells, Fargo & Co., and make propositions to creditors through some solicitors or other persons as follows:

1st. All accounts to be audited by solicitors or other persons employed.

2. Trustees will pay 25 per cent. in cash, 25 per cent. in six months, and 50 per cent. in 12 months; the deferred payment to bear interest at the rate of 12 per cent. per annum.

135 If thought advisable by the agent to make this proposition, he will telegraph the amount in figures after the words, as follows:

Total amount of claims, not including Wells, Fargo & Co., "Alexander."

Cash probably required to pay 25 per cent., "Cæsar."

Cash out of 6,000 pounds remaining for working, "Napoleon."

The reply to which from England would be, "Bonaparte."

If you can arrange to pay creditors 25 per cent. of their legal claims and the remainder from a portion of profits, obtaining an agreement of the same from the creditors, telegraph the word "creditors." Should you be unable to carry out these instructions in the terms and in manner above directed, or any of them, then you are hereby instructed and directed to arrange the affairs for us as near thereto as circumstances and arrangements will permit, bearing in mind the small sum of money placed at our disposal by the subscribers for the purpose.

When, and as soon as the above directions and instructions are carried out, or when you may consider it expedient so to do, you are instructed and directed to take the necessary steps to work the mines and furnaces, and carry on the general operations of the com-
136 pany in Utah; for that purpose retaining such of the present servants and officers of the company as you may think desirable, as well as the engaging and employing other parties for the purposes aforesaid. You will be pleased to bear in mind that your mission is one of inquiry, and you are not to pay or agree to pay one penny until you satisfy us that the whole matter can be settled, and you are to treat the letter written to you this day by the undersigned Lord Claud Hamilton as part of these instructions.

We are, dear sir, yours truly,

CLAUD HAMILTON.
JOHN ELLIOTT.

Whereas a certain sum of money has been subscribed and promised for the purpose of being used to relieve the Mammoth Copperopolis of Utah Company from its present embar'assments and to obtain possession of and work the mine until the company are in a position to issue second debenture bonds, as have been proposed; it is now suggested that the money referred to above shall be placed in the hands of Lord Claud Hamilton and John Elliott, as trustees, under the following arrangements, proposed to be carried out:

1st. That the trustees of the first debenture holders give au-
137 thority to to present them at Salt Lake City, under written instructions, to protect the interests of the debenture holders under the first-mortgage deed.

2nd. The subscribers to the proposed second issue of debentures authorize the trustees to use the money subscribed for the following purposes:

(A.) To purchase the claims and judgments of Wells, Fargo & Co. upon such terms as may be agreed.

(B.) To purchase and take an assignment of all liens existing upon the company's property.

(C.) To use the balance of any money remaining in the fund in working the mine under an arrangement that the company lease the mine, &c., to the trustees, as hereinafter set forth, subject to the existing mortgage claims.

3. That the company lease the mine and all the property of the company to the trustees on the following conditions:

(A.) That the trustees advance money sufficient to enable them to obtain possession of the mine and work the same under the lease, by taking the position of the parties at present holding liens upon the property.

(B.)That an agent be mutually agreed upon by the company and the trustees.

(C.) That the regular accounts of all receipts and expenditures
138 by the agent be properly kept, and monthly returns forwarded regularly to the trustees and the company.

(D.) That the profits derived from working the property be applied 1st, to any claims that may be due under arrangement to Wells, Fargo & Co. for the purchase of their judgment; 2ndly, to the payment of interest on the first debenture bonds; 3rdly, to the payment of interest on the amount of money subscribed towards the proposed second issue of debenture bonds.

4. The lease to contain a condition that as soon as the company can show that they are in a position to execute a second mortgage upon the property and issue the proposed second debentures, the trustees will assign to the company all claims and judgments and other demands that may have been made, purchased, and obtained by them, and hand over, free from the lease, to the company, the full control and management of the property, taking debentures for the amount, which debentures are to be distributed to the persons entitled thereto, according to their subscriptions.

By the above arrangement it will be seen that the trustees for the time being will take the place of the judgment-creditors against the property of the company, and in fact, hold as security for
139 the money entrusted to them by a lien on the whole of the company's property, subject only to the first-mortgage deed, and which will continue to be the case until the company is in a position to execute a second-mortgage deed, also at the same time work at the mine will be carried on.

We, the undersigned, consent to the amount of our subscriptions being used by the trustees only for the purposes and on the conditions hereinbefore stated.

(Signed)

	Amount.
CLAUD HAMILTON,	1,950 pounds.
C. COOCH.....	100 pounds.
M. KING.....	190 pounds.
W. J. VALENTINE..	500 pounds.
H. W. SPRATT.....	300 pounds.

EXHIBIT C.

THE MAMMOTH COPPEROPOLIS OF UTAH, LIMITED,
25 *Moorgate street, London, 13th Aug.*, 1874.

The right hon'ble Lord Claud Hamilton & John Elliott, esq., trustees of the first debenture holders, and to the fund raised for the purposes set forth in the circular adopted at a board meeting held on the 16th July, 1874:

MY LORD AND SIR: In acting under the powers of attorney this day given to me by you, I shall in all things act strictly within

such instructions, and so as in all things to protect you in what I may do thereunder from personal liability, looking to anything that I may do to the funds and not to you personally.

I am, my lord and sir, your obedient servant,

CHAS. WM. COOK.

EXHIBIT B.

LONDON, *Friday, Aug. 14th*, 1874—10.50.

CHARLES W. COOK, Esq.:

DEAR SIR: I propose to be at the office at 11.50; I cannot come sooner. In the meanwhile I wish you would prepare a letter to be signed by you addressed to the trustees, to the effect that you fully understand and admit that your mission is one of inquiry; not for immediate payment of outstanding liabilities; that you pledge yourself not to undertake any payments except as part of a general scheme for the whole liabilities of the company in America; and that whilst you may negotiate arrangements and hold out plans of settlement, that they are all to be subject to approval of trustees who will not hold themselves responsible for any promises or payments made without their consent and confirmation. This document is alike desirable for the safety of the trustees and for your own convenience.

If it were to be thought you were out there with power to distribute 6,000 pounds you would be worried out of your life by applications, promises, threats, and impositions. The whole money might be spent and no benefit to the company obtained. It will strengthen your position to be able to refuse all demands until submitted here. This document is to be understood as a key and guide to your general instructions.

I look upon this as absolutely necessary.

Yours faithfully,

CLAUD HAMILTON.

EXHIBIT D.

THE MAMMOTH COPPEROPOLIS OF UTAH, LIMITED,
25 *Moorgate street, London, 14th Aug.*, 1874.

MY LORD AND SIR: In reply to his lordship's note of Friday, the 14th inst., I fully understand and admit that my mission is one of inquiry, not for immediate payment of outstanding liabilities; that I pledge myself not to undertake any payments except as a part of a general scheme for the whole liabilities of the company in America; and that whilst I may negociate arrangements and hold out plans of settlement, that they are all to be subject to approval from you, and no payments to be made until such approval is signified.

Your obed't servant,

CHAS. WM. COOK.

The right hon'ble Lord C. HAMILTON & JHO. ELLIOTT, Esq'r.

EXHIBIT 3.

To all to whom these presents shall come, the Mammoth Copperopolis of Utah, Limited, whose registered office is situate at 25 Moorgate street, in the city of London, in the kingdom of Great Britain, sends greeting:

Whereas the said Mammoth Copperopolis of Utah, &c., Limited, here-

inafter called the said mining company, was duly incorporated with limited liability on the eight' day of December, one thousand eight hundred and seventy-one, under the provisions of the companies acts of 1862 & 1867; and whereas the directors o fthe said mining company are desirous of appointing Charles William Cook, of Douglass House, Tollington Park, Upper Holloway, in the county of Middlesex, also in the Kingdom of Great Britain, the duly appointed secretary of the said mining company, to be the attorney and agent of the said company for the purpose of the said Charles William Cook proceeding to the United States of America to despatch certain business on the part of the said mining company, and therefore these presents witness, that the said Mammoth Copperopolis of Utah, Limited, do hereby nominate, constitute, and appoint the said
143 Charles William Cook to be the attorney and agent in America, of the said Mammoth Copperopolis of Utah, Limited, and in their name and as their act and acts, or otherwise, to conduct the works, mining, smelting, and milling operations of them the said mining company in America, and to carry on the business of the said mining in America aforesaid, and to do and transact all acts, matters, and things incidental to such business as are usual, or may at any time hereafter be usual or proper for the carrying on of the said business by the said mining company and to employ engineers, clerks, miners, workmen, and other servants for the purpose of carrying on such mining, smelting, and milling operations on such terms and at such remuneration as he may deem expedient, and any of such engineers, miners, clerks, workmen, and other servants, or any heretofore appointed at his pleasure, he may remove, or dismiss or suspend, and to make, sell, and dispose of the ores of the company as he may deem expedient for the benefit of company, and to make and carry out all necessary arrangements for such purposes and generally to use and perfect all such ways and means and to do all such other acts as may be necessary or proper to be done or effected for the purpose of carrying on the business and objects of the said company. And also to commence, carry on, and prosecute or defend any actions suits, or other proceedings against any person or
144 persons, who may now be or may hereafter be indebted to the company, or which may be brought against the company in America, and to compromise and settle any such actions, suits, or other proceedings as he may deem expedient for the interests of the company, and generally to use and pursue all such ways and means, and to make, do, and execute all such acts, deeds, matters and things, as may be requisite or expedient for such purposes, or for the interests of the said company, including in such acts and deeds, matters and things; the surrender and delivery up of all or any portion of the mining property and effects of the said company in America, to the said trustees of the first debenture holders or their duly authorized agent, or the taking possession of the same himself as the agent for such trustees, and to make, do, and execute all such acts, deeds, and arrangements as he may deem expedient, and that as fully and effectually to all intents and purposes as the board of directors of the said Mammoth Copperopolis of Utah, Limited, could or might do if they were personally present, subject only to such varied or further instructions as he may from time to time receive from the board of directors of the said mining company, and also to substitute and appoint any person or persons to act under or in the place of the said Charles William Cook, in all or any of the
145 matters aforesaid, and every such substitution or appointment at pleasure to revoke. The said mining company hereby agreeing

to ratify and confirm all and whatsoever the said Charles William Cook, or his substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises, by virtue of these presents. And also, if necessary, to enroll or register the presents.

In witness whereof, the said Mammoth Copperopolis of Utah, Limited, have hereunto caused their common seal to be affixed, this thirteenth day of August, one thousand eight hundred and seventy-four.

Sealed with the common seal of the Mammoth Copperopolis of Utah, Limited; by virtue of a resolution of the board of directors, passed the 13th day of August, 1874. } THE MAMMOTH COPPEROPOLIS OF UTAH, LIMITED.

The 13th day of August, 1874, in the presence of—

HENRY WILLIAM SPRATT,
MORRIS KING,
Directors.

Countersigned: CHAS. WM. COOK, *Secretary.*

Witnesses:
AUGUSTUS F. K. SHEPPARD.
JOHN ANDREW BLACK.

Acknowledged before John Henry Grain, a notary public of the city of London, on the 13th day of August, 1874, and certified to
146 by him, as being executed in due form of law, and that the same was duly signed in his presence, and the common seal of the company affixed thereto.

Certificate of Josiah Nunn, vice and deputy consul-general of the United States for Great Britian and Ireland, that John Henry Grain was a notary public for the city of London, and due faith ought to be given to his signature, &c., &c., &c., &c., &c.

EXHIBIT 5.

THE MAMMOTH COPPEROPOLIS OF UTAH, LIMITED,
London, 38, East side Moorgate street,
E. C., 24th June, 1876.

C. W. COOK, Esq'r., *Salt Lake City:*

DEAR SIR: I have to acknowledge the receipt of your letters of the 6th, 13th, 20th & 27th, Nov'r 1875; 11th, 15th, & 18th Dec., 1875; 8th & 29th Jan'y, 1876; 8th March; 15th April; 28th and 34st May, 1876.

Yesterday I wired you as follows:

Addressed to Chas. Cook, Salt Lake City, as requested by you.

All your legal powers "temporarily" suspended; satisfactory explanation "follows." I hope you duly noted the words "temporarily" and "satisfactory," the object of inserting the words being to show you that altho' we are suspending your powers till further notice, the fact of doing so is not to be taken by you as an expression of dissatisfaction, but has been rendered necessary by circumstances which have
147 occurred which I will explain.

Your last letter referred to your entering into some arrangements with Mr. Clohecy about the alleged lease. Now, although you had some instructions on the 29th November to obtain some modifications, but which, bear in mind, were not to be carried out by you, but submitted to the directors over here for approval. Yet since that date the whole phase of things has altered. Mr. Clohecy has been over in

England. We have been, as in fact you suggested yourself, in direct communication with him, and some provisional arrangements have been entered into. Any action that may therefore be taken by you in the matter under the powers you have received, without specific instructions from here, will make inestimable confusion. For the present, therefore, and until further notice, you must distinctly understand, and I write now by the instructions of the Mammoth Copperpolis of Utah, Limited, also of Lord Claud Hamilton and John Elliott, trustees for the first debenture holders, also of Lord Claud Hamilton and John Elliott, as trustees for the second debenture fund, that your three powers of attorney, and all the powers held by you by virtue thereof, or as agent for any of the said parties, or as representing the purchasers from Wells, Fargo are suspended. In the mean time we have a provisional arrangament with Mr. Clohecy, any communication respecting
148 which must be made to him direct from here, and we trust that where they are completed they will be to the satisfaction of all parties. And it may well be that shortly you may be instructed to do some specific action under the powers; only distinctly understand that they are suspended until you receive instructions from here to take any action upon them, and then only to the extent for which you receive instructions.

I am very specific in putting this before you, because your granting the lease at all was so clearly in excess of your powers, and is a proceeding that has and does hamper us so very much that now we have taken the negotiations into the hands of the board and trustees over here; you must distinctly feel that there can be no possible misunderstanding between us, and as I said before, that your powers are all suspended until further notice.

To turn to another subject: you complain of not having heard from me since the 29th November. You had really got us in such a position that it was almost impossible for us to write at the time, and in some respects this portion of my letter is somewhat in the nature of a complaint. In your letter of the 15th Oct'r you wrote: "In order that the lease is properly carried out, it will be absolutely necessary for the trustees to be represented here, and as I am at present their rep-
149 resentative, I will continue to be so until I receive instructions, or circumstances occurring to compel my return to England."

The trustees and directors, of course, agreed with you that they must have a representative over there, for the purpose you refer to—and asked you in my letter of 29th November at what rate, under the circumstances, you thought your salary should be whilst you are engaged in these matters, and also informing you that under no circumstances could you look to the trustees personally, and in the last paragraph but one of that letter I referred to the proper discharge of your duties in such a manner, as showed we all assumed you had some serious duties to perform. You replied, "I think my remuneration should be at the rate of 200 dollars per month, which amount will be able to be met from royalties, and as soon as an increase of receipts would warrant, I think I should receive 250 and 300 dollars per month. At present, while the tunnel is being driven, there will of course be little or no amount of royalty; and when that work is finished, I presume, 150 tons of ore should be taken out and shipped; this would realize 900 dollars, which with, say, 100 dollars for use of furnaces, would make 1,000 dollars per month, leaving after payment of my 200 dollars, 800 dollars. It is and always
150 has been distinctly understood that I hold neither of the trustees personally liable for any claims, & it is not likely that I should

ever receive any remuneration for my services from Mr. Clohecy, who, from what I have seen, is not likely to offer."

Regarding the mention made by you about the tunnel, you had evidently miscalculated your arrangements, which were based to some extent on Mr. Clohecy continuing driving the tunnel, but he stopped that work, and the board were obliged to arrange with him that he should be paid for that work, or the greater portion of it, out of the royalties, and, as he has succeeded in cutting the lode, we hope that will turn out to have been a satisfactory arrangement.

Now, as to the amount of your salary, proposed by you to be at the rate of 200 dollars per month, out of the royalties, the trustees and the board could not help thinking that this was somewhat high, and they have postponed actually agreeing to that amount until they could ascertain a little what you were really doing for the money; whether what you were doing would justify it. Now we can all of us understand that what we want out there is what you yourself suggested: some one to represent the trustees, to see that the lease, so long as it is acted
151 upon, is properly carried out—I use the word lease because you do, but you must distinctly understand that we have never admitted the lease is a valid one, and in all our arrangements and negotiations with Clohecy we have, by an understanding between us, expressly guarded ourselves from admitting the validity of the lease, whilst, on the other hand, he has expressly guarded himself against admitting the invalidity of the lease; with this observation, it may be convenient to call it the lease, but surely that agent should live at the mine; should look into things for himself, and should send constant reports from his own knowledge, and not merely the information he obtains from other people, who may or may not be interested parties; and you will remember that I have several times told you that we must have information from you, and that we relied on your statements, but placed no reliance on statements made by you founded on hearsay from other people. Now, the trustees and directors, although thinking 200 dollars a month rather high, were quite prepared to admit that if adequate services were rendered the amount could not be unreasonable, and they waited to ascertain what you were doing for them, and would be glad to have your own account.

152 So far as we can learn, you have never been to the mine, and the whole of this year we have only received 6 letters from you. We were greatly astonished to learn, quite by accident, that Mr. Clohecy was in London, not having been advised of the same by you; but, some time after his being in London, and after we had seen him, and also after we had seen Mr. Fowler, who came over in the same ship with him, we heard from you that it was announced Mr. Clohecy had gone to London. Surely, had you been looking actively after our interests, you would have ascertained this fact and advised us of it, and all the information that you have given us since the date of this lease has been from hearsay, according to your own letters, and not from your own knowledge. Now, what we wanted was not that you should merely gather reports, but that you should be check upon everybody in the matter, and that the trustees and board could rely upon you to give them accurate information of your own knowledge, because whatever mistakes you may have made—we do think that any statement that you make of your own knowledge is reliable. You see, all this points to the fact that if you had rendered such services to the company as your letter offered, adequate remuneration to you will not be carped at, and doubtless
153 you can give us such an explanation as will be fairly satisfactory,

and show how your time has been occupied, so as to justify a salary at that rate. I notice the account you sent in about your past salary; you have omitted to give credit for 100 pounds paid your wife by your direction, and 10 pounds paid her further on another occasion. I will look up the particulars, and write you more specifically at another time.

Please understand that we are in direct communication with Clohecy, and whilst we are so, and indeed till further notice to you, you must not interfere with our arrangements with him; but, of course, you will keep us advised of everything that is doing, and send your letters once a week, at least, as you have on various occasions promised to do. Send us, also, exact list of creditors out in America; their names and amount, and nature of their claims and their rights. Send us, also, full particulars as to all returns, and everything connected with the mine.

Yours, very truly,

S. W. RILEY,
Pro. Sec.

EXHIBIT E.

This indenture, made the 23rd day of June, in the year of our Lord one thousand eight hundred and seventy-four, between William L. Sperry, sheriff of Juab County, Territory of Utah, the party of the
154 first part, and Henry Wadsworth, of Salt Lake City, county of Salt Lake, Territory of Utah, the party of the second part. Whereas, by virtue of an execution issued out of and under the seal of the district court of the third judicial district of the Territory, tested the 17th day of April, 1874, upon a judgment recovered in said court on the 21st day of January, A. D. 1874, in favor of Wells, Fargo and Company, and against Mammoth Copperopolis of Utah, Limited, unto the said sheriff directed and delivered, commanding him that out of the personal property of said judgment-debtor in his country, he should cause to be made certain monies in said writ specified, and if sufficient personal property of said judgment-debtor could not be found, then he should cause the amount of said judgment to be made out of the real property belonging to said judgment-debtor on the 21st day of January, A. D. 1874, or at any time afterward; and whereas, because sufficient personal property of the said judgment-debtor could not be found, whereof said sheriff could cause to be made the moneys specified in said writ, the said sheriff did, in obedience to said command, levy on, take, and seize all the right, title, interest, claim which the said judgment-debtor so held in and to the lands, tenements, real estate, and premises hereinafter set
155 forth and described, with the appurtenances, and did, on the 10th day of September, A. D. 1874, sell all the right, title, interest, and claim of the said judgment-debtor in and to said premises, at public auction, in front of the county court-house, in the city of Nephi, county of Juab, and Territory of Utah, between the hours of nine in the morning and five in the afternoon of that day, namely, at 12 o'clock m., after having first given due notice of the time and place of such sale, according to law; at which sale all the right, title, interest, and claim of the said judgment-debtor in and to said premises were struck off and sold to the said party of the second part for the sum of thirteen thousand dollars, lawful money of the United States of America, the said party of the second part being the highest bidder, and that being the highest sum bid for the same; whereupon the said sheriff, after receiv-

ing from said purchaser the said sum of money so bid as aforesaid, gave the said party of the second part such certificate of said sale as is by law directed to be given, and a duplicate of such certificate was duly filed by said sheriff in the office of the recorder of the county of Juab; and whereas six months after said sale had expired without any redemption of said premises having been made:

Now this indenture witnesseth that the said William L. Sperry, the sheriff aforesaid, by virtue of said writ, and in pursuance of the
156 statute in such case made and provided, for and in consideration of the said sum of money to him in hand paid as aforesaid, by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, and claim which the said judgment-debtor, Mammoth Copperopolis of Utah (Limited), had on the 21st day of January, A. D. 1874, or at any time afterwards, or now has, in and to all the following-described property, lying and being in the county of Juab, and Territory of Utah, and particularly described as follows, to wit: 1st. The Mammoth Copperopolis mine, situate on Mammoth hill, Tintic mining district, together with all the dips, spurs, and angles thereto belonging or appertaining, containing a surface measurement of $4\frac{3228}{5444}$ acres; 2nd. One fifteen-stamp quartz mill, known as the Mammoth Copperopolis Quartz Mill, and the ground whereon the same is situate, containing five acres, situate in said mining district, together with all improvements and appurtenances, and situate thereon, consisting of offices, blacksmith-shop, smelter, and other buildings; 3d.
157 Also a certain mill-site, called Roseville, being at the spring and embracing the same, from which the said mill and smelter is supplied, containing an area of five acres, together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining: To have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said sheriff can, may, or ought to, by virtue of said writ and by the statute in such case made and provided, grant, bargain, sell, and confirm the same.

In witness whereof the said sheriff, the party of the first part, has hereunto set his hand and seal the day and year first above written.

WILLIAM L. SPERRY, [SEAL.]
Sheriff of Juab County, Utah Territory.

Signed, sealed, and delivered in the presence of—
SAMUEL PITCHFORTH.
R. T. SMITH.

The word smelter, in the 18th line of page 3d, was interlined before the execution and delivery of this instrument.

TERRITORY OF UTAH,
County of Juab, ss:

On this 28th day of June, A. D. one thousand eight hundred and seventy-five, before me, Samuel Pitchforth, probate clerk, and a notary public in and for said county, duly commissioned and sworn, per-
158 sonally appeared the within-named William Sperry, sheriff of said county of Juab, Territory of Utah, whose name is subscribed to the foregoing instrument as a party thereto, personally known to me to be the individual described in and who executed the said foregoing instrument, and he acknowledged to me that he executed the

same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] SAMUEL PITCHFORTH,
Clerk of the Probate Court, & Notary Public of Juab County, Utah Territory.

EXHIBIT F.

This indenture, made the second day of July, in the year of our Lord one thousand eight hundred and seventy-five, between Henry Wadsworth, of the city and county of Salt Lake, and the Territory of Utah, the party of the first part, and Lord Claud Hamilton and John Elliott, of the city of London, England, the parties of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of twenty-five hundred pounds sterling, to him in hand
159 paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed unto the said party of the second part, and to their heirs and assigns forever, all the following-described property, situate, lying, and being in the county of Juab, and Territory of Utah, to wit: 1st, the Mammoth Copperopolis mine, situate on Mammoth hill, Tintic mining district, in said county and Territory, and all its dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, containing a surface measurement of four & $\frac{3228}{3445}$ acres.

2nd. One fifteen (15) stamp quartz mill, known as the Mammoth Copperopolis Quartz Mill, and the ground whereon the same is situated, containing five (5) acres, with all the improvements appurtenant and situate thereon, consisting of office, blacksmith-shop, smelter, and other buildings.

3d. Also a certain mill-site, called Roseville, being at the spring and embracing the same, from which the said mill and smelter are supplied with water, containing an area of five acres, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues,
160 and profits thereof, and also all the estate, right, title, interest, possession, claim, and demand whatsoever as well in law as in equity of the said party of the first part of, in, or to the said premises and every part and parcel thereof with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, their heirs and assigns forever; provided, nevertheless, this conveyance is made by the said party of the first part to the said parties of the second part, their heirs and assigns, in trust for and for the use and benefit of the parties who have guaranteed the payment of twenty-five hundred pounds sterling, a certain claim held by Wells, Fargo & Co. against the Mammoth Copperopolis of Utah (Limited).

In witness whereof the said party of the first part has hereunto set his hand and seal the day and first above written.

H. WADSWORTH. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. C. HALL.

UNITED STATES OF AMERICA,
Territory of Utah, County of Salt Lake, ss:

On this second day of July, A. D. one thousand eight hundred and seventy-five, before me, W. C. Hall, a notary public in and for Salt Lake County, in the Territory of Utah, personally appeared Henry
161 Wadsworth, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the annexed instrument as a party thereto, and duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in Salt Lake City, Salt Lake Co., U. T., the day and year in this certificate first above written.

[SEAL.] W. C. HALL,
Notary Public.

EXHIBIT G.

Specifications of the grounds on which defendants rely on their motion for a new trial.

First. The evidence is insufficient to justify the findings, decision, and judgment in the following particulars:

1st. There was no evidence to show that the claims sued on are chargeable to the trust sought to be burdened, or that they were contracted for the use or advantage of the beneficiaries of such trust, or that Cook or the trustees for the first debentures had any authority or power to burden the trust with these claims, one of which is for old debts of the debtor corporation bought and still held by plaintiff,
162 and the other for a claim of salary by Cook for alleged services from December 1st, 1875, to August 1st, 1876, which are not chargeable to said trust, nor within the scope of the powers of the trustees to burden their trust with it.

2nd. The evidence does not justify the findings that the defendants, as trustees for the holders of said first debentures, entered into possession of the mortgaged property described in said trust-deed, and under such deed, because they could take no lawful possession under the law without foreclosure and sale pursuant to the provisions of said trust-deed, and the evidence does show a right of entry under the deed from H. Wadsworth, Exhibit F. In another right and such possessions as was taken must be presumed to have been under the lawful right, besides the only witness swearing to the fact and character of the possession swears that the deed from Wadsworth was prerequisite to taking possession.

3rd. The evidence does not justify the findings and decision that the said trust-deed of Aug. 19th, 1873, conveyed the legal title to the mortgaged property therein described, and the defendants own and hold the legal title to the same, and such decision is against law.

163 4th. The evidence does not justify the finding and conclusion that the defendants in their said fiduciary capacity are indebted to the plaintiff.

5th. The evidence does not justify the finding of an account stated between the parties hereto on the first of January, 1875, or at any time, for that it was not shown by the proofs that the plaintiff ever had any dealings with the defendants, either said fiduciary capacity as a predi-

cate for an account stated, or that could charge or burden said trust, but the matters of such stated account were debts and transactions of said debtor corporation in no way connected with or chargeable to said trust or the beneficiaries therein.

Errors in law occurring at the trial and excepted to by defendants.

1st. The court erred in admitting in evidence, against the defendant's objection, Exhibit 5, being the letter from S. W. Riley, as secretary of said corporotion, to said Cook, dated June 24th, 1876, because the same was not written by or on behalf of the defendants as trustees aforesaid, and does not tend to prove any ratifications of said Cook's acts and proceedings by them, and because the alleged acts of Cook to charge said trust were beyond the power and authority of the trustees
164 themselves and incapable of ratification by them.

2nd. The court erred in its decision that said trust-deed or mortgage of the 19th August, 1873, passed the legal title to the mortgaged premises to the defendants, or in any manner affected the legal title further than to create a lien thereon as a security for the payment of said 1st debentures and interest thereon, to be enforced only accordingly to the terms of said instrument.

3rd. The court erred in its decision that the defendants, in their said fiduciary capacity, hold and own said mortgaged property, and that they did or could rightfully take possession thereof in such capacity without foreclosure and sale under the instrument creating said lien.

4th. The court erred in its decision that these defendants, in their said fiduciary capacity are indebted to the plaintiff at all in this action.

5th. The court erred in entering judgment for the plaintiff in this action.

6th. The court erred in not rendering judgment in this action for defendants.

ROSBOROUGH AND MERRITT,
Att'ys for Def'ts.

We hereby certify that the foregoing statement on motions for a new trial has been agreed upon, and is correct.
165 McKEAN & SON,
Pl'ff's Att'ys.
ROSBOROUGH AND MERRITT,
Def'ts Att'ys.

TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PL'FF,
vs.
LORD CLAUD HAMILTON ET AL., TRUSTEES, &c., def'ts.

Said plaintiff will take notice that the defendants appeal to the supreme court of said Territory from the judgment in this case, and from the order denying their motions for a new trial.

ROSBOROUGH AND MERRITT,
Att'ys for Def'ts.

To J. B. McKEAN & SON, Esq'rs,
Att'ys for Pl'ff.:

Service of the above notice of appeal this day, 8th November, 1878, is hereby admitted.

JAS. B. McKEAN & SON,
Plaintiff's Attorneys.

Filed Nov. 8, 1878.

TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PL'FF,
vs.
LORD CLAUD HAMILTON ET AL., TRUSTEES, &c., def'ts.

166 Whereas said defendants are about to appeal to the supreme court of said Territory from the judgment of the said district court in the above-entitled cause and from the order therein denying their motion for a new trial: Now, therefore, we, Samuel A. Merritt and Joseph B. Roseborough, sureties on behalf of said defendants, hereby undertake, in the sum of two hundred dollars, that the said defendants, appellants, will pay all damages and costs which may be awarded against them on such appeal.

SAMUEL A. MERRITT.
JOSEPH B. ROSBOROUGH.

TERRITORY OF UTAH,
County of Salt Lake:

Joseph B. Rosborough and Samuel A. Merritt, the sureties in the foregoing undertaking, being both duly sworn, severally declare, each, that he is worth the sum therein stated over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOSEPH B. ROSBOROUGH.
SAMUEL A. MERRITT.

Subscribed & sworn to before me this 8th day of November, 1878.

C. S. HILL, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

Filed Nov'r 8, 1878.

167 TERRITORY OF UTAH,
County of Salt Lake:

In the district court, 3rd judicial district.

ISAAC WOOLF, PL'FF,
vs.
LORD CLAUD HAMILTON ET AL., DEF'TS.

On application of the defendents it is directed that a printed transcript on appeal in this case be dispensed with; that a printer's abstract

of the case be furnished to the appellate court, and that the amount of the undertaking for costs & damages on appeal in this case be fixed at $200.

Nov. 7, 1878.

M. SCHAEFFER, *Judge.*

Filed Nov. 7th, 1878.

TERRITORY OF UTAH,
County of Salt Lake:

We, the undersigned, attorneys for the appellants and respondent, respectively hereby certify that the foregoing transcript on appeal is agreed upon, and is correct.

Dated December 18th, 1878.

ROSBOROUGH & MERRITT,
Att'ys for Appellants.
JAS. B. McKEAN & SON,
Att'ys for Respondents.

168 Afterwards, at a term of said supreme court of Utah Territory, begun and held at Salt Lake City on the 13th day of January, A. D. 1879, proceedings were had in said court and said cause and entered on the records of said court, as follows:

THURSDAY, *January 16th, A. D.* 1879.

* * * * * * *

ISAAC WOOLF, RESPONDENT,
vs.
CLAUD HAMILTON ET AL., TRUSTEES, &C., APPELLANTS. } From 3d dist.

This cause, coming on regularly for hearing, was argued by J. G. Sutherland, esq., for appellants; T. A. McBride for respondents.

Also: FRIDAY, *January 17th, A. D.* 1879.

* * * * * * *

ISAAC WOOLF, RESPONDENT,
vs.
CLAUD HAMILTON ET AL., TRUSTEES, &C., APPELLANTS. } From 3d dist.

This cause was further argued by J. R. McBride, esq., for respondent.

169 Also: SATURDAY, *January 18th, A. D.* 1879.

A session of the supreme court of Utah Territory was held this day.

* * * * * * *

ISAAC WOOLF, RESPONDENT,
vs.
CLAUD HAMILTON ET AL., TRUSTEES, APPELLANTS. } From 3d dist.

This cause was further argued by J. B. Roseborough, esq., for appellants.

Also: MONDAY, *January 20th, A. D.* 1879.

* * * * * * *

ISAAC WOOLF, RESPONDENT,
vs.
CLAUD HAMILTON ET AL., APPELLANTS. } From 3d dist.

This cause was further argued by J. B. Roseborough, esq., for appellants; submitted and taken under advisement by the court.

170 And afterwards, at a term of said supreme court of Utah Territory, began and held at Salt Lake City, on the 2d day of June, A. D. 1879, proceedings were had in said court and cause, and entered on the records of said court as follows, to wit:

MONDAY, *June 23d, A. D.* 1879.

* * * * * * *

ISAAC WOOLF, RESPONDENT,
vs.
CLAUD HAMILTON ET AL., APPELLANTS. } From 3d dist.

This cause having been argued, submitted, and taken under advisement at a former term of this court, and the court being sufficiently advised thereupon, it is now here ordered and adjudged (Schaeffer, C. J., dissenting) that the judgement of the district court be, and the same is hereby, reversed, and the cause dismissed; also that appellants recover of respondent $170.61 costs aforesaid.

171 And on the 23d day of June, 1879, was filed in the clerk's office of said supreme court the opinion of said court in said cause, of which the following is a copy, to wit:

172 Territory of Utah, supreme court.

ISAAC WOOLF, RESPONDENT,
vs.
LORD CLAUD HAMILTON AND JOHN ELLIOTT, trustees for the first debenture bonds of the Mammoth Copperopolis of Utah (Limited), appellants. } Appeal from the third judicial district.

The demand of the plaintiff in this action had the same origin as that sued for in Kahn et al. vs. Hamilton et al., just decided, and the facts on which this plaintiff seeks to charge these defendants are the same as in that case. Therefore the reasons given for the judgement in that case must govern this. Judgement reversed with costs.

PHILIP H. EMERSON,
Asso. Justice.

Boreman, J., concurs. Schaeffer, C. J., dissent.

(Endorsed:) Utah Territory, supreme court. Isaac Woolf vs. Hamilton et al. Opinion of the court. Filed June 23d, 1879. E. T. Sprague, clerk.

173 And on the 6th day of October, 1879, was issued a writ of error in said cause of which a copy was on same day lodged in the clerk's office of said supreme court of Utah Territory, and the original of which, with the original citation, also on same day issued, with proof of service of the latter follow to wit:

174 In the Supreme Court of the United States.

ISAAC WOOLF, PLAINTIFF IN ERROR,
vs.
CLAUD HAMILTON (COMMONLY CALLED LORD Claud Hamilton) and JOHN ELLIOTT, trustees, of the first and second debenture bondholders of the Mammoth Copperopolis of Utah (Limited), a corporation, defendants in error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the Territory of Utah, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the said Territory, before you or some of you, being the highest court of said Territory in which a decision could be had in the said suit between Isaac Woolf, plaintiff and respondent, and Claud Hamilton (commonly called Lord Claud Hamilton) and John Elliott, trustees of the first and
175 second debenture bondholders of the Mammoth Copperopolis of Utah (Limited), a corporation, defendants and appellants, in said court, a manifest error hath happened, to the great damage of the pl'ff's in error in this writ mentioned, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Hon. Morrisson R. Waite, Chief Justice of the said
176 Supreme Court, the 6th day of October, 1879.

[SEAL.] E. T. SPRAGUE,
Clerk of the Supreme Court of Utah Territory.

Allowed by—

(Indorsed:) Woolf vs. Hamilton et al. Writ of error. Filed Oct. 6th, 1879. E. T. Sprague, clerk.

177 In the Supreme Court of the United States.

ISAAC WOOLF, PL'FF IN ERROR,
vs.
CLAUD HAMILTON (COMMONLY CALLED LORD Claud Hamilton) and John Elliott, trustees of the first and *and* second debenture bondholders of the Mammoth Copperopolis of Utah (Limited), a corporation, def'ts in error.

The United States of America, greeting, to the above-named defendants in error.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Utah Territory, wherein Isaac Woolf is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as
on said writ of error mentioned, should not be corrected, and
178 why speedy justice should not be done to the parties in that behalf.

In witness whereof, I, John A. Hunter, chief justice of the supreme court of Utah Territory, have hereunto set my hand this day of October, 1879.

JOHN A. HUNTER,
Chief Justice of the Supreme Court of Utah Territory.

Service of the foregoing citation was made this 6th day of October, 1879.

ROSBOROUGH & MERRITT,
Att'ys for Def'ts.

(Indorsed:) Woolf vs. Hamilton et al. Citation. Filed 6th Oct., 1879. E. T. Sprague, clerk.

179 And on said 6th day of October, A. D. 1879, was also filed in said office of the clerk of said supreme court of Utah Territory a bond on the writs of error in said cause, of which the following is a copy, to wit:

180 Know all men by these presence, that, we, Charles Popper and Emmanuel Kahn, both of the county of Salt Lake, and Territory of Utah, are held and firmly bound unto Claud Hamilton and John Elliott, trustees of the first and second debenture bondholders of the Mammoth Copperopolis of Utah (Limited), a corporation, in the full and just sum of two hundred and fifty dollars, to be paid to the said Hamilton and Elliott, trustees as aforesaid, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents. Sealed with our seals and dated this 6th day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately at a supreme court held in said Territory, in a suit depending in said court between Isaac Woolf, plaintiff and respondent, and Claud Hamilton (commonly called Lord Claud Hamilton) and John Elliott, trustees of the first and second debenture bondholders

of the Mammoth Copperopolis of Utah (Limited), defendants and appellants therein, there was rendered against said plaintiff and respondent a judgement; and said plaintiff and respondent having
181 obtained a writ of error and filed a copy thereof with the clerk of said court to reverse the judgement in the aforesaid suit, and a citation directed to the said defendants and appellants, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if said plaintiff in said writ of error shall prosecute the same to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES POPPER. [SEAL.]
EMAN'L KAHN. [SEAL.]

Sealed and delivered in presence of—
T. A. McBRIDE.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, E. T. Sprague, clerk of the supreme court of the Territory of Utah, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

E. T. SPRAGUE, *Clerk.*

(Endorsed:) Filed 6th Oct., 1879. E. T. Sprague, clerk.

182 TERRITORY OF UTAH,
Salt Lake County, ss:

I, E. T. Sprague, clerk of the supreme court of Utah Territory, in obedience to the writ of error attached hereto, do herewith return to the Supreme Court of the United States said original writ, the citation issued thereon, with proof of service thereof, and a transcript of the records and proceedings in and of said supreme court of said Territory in the cause in said writ mentioned; also of the opinion of said last-named court therein and of bond on said writ; and I hereby certify that said transcript of the record and proceedings, or said of said opinion and bond, is a full, true, correct, and complete copy of the several originals thereof and endorsements thereon, on file or of record in my office.

In witness whereof I have hereunto set my hand and the seal of said supreme court of Utah Territory, at Salt Lake City, this 6th day of October, A. D. 1879.

[SEAL.]

E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

(Indorsement on cover:) No. 429. Isaac Woolf, plaintiff in error, vs. Claud Hamilton (commonly called Lord Claud Hamilton) and John Elliott, trustees of the first and second debenture bondolders of The Mammoth Copperopolis of Utah (Limited). Utah Terr'y sup. court. Filed 15 November, 1879.

108-B

OFFICE SUPREME COURT U.S.
FILED
OCT 2 1882
JAMES H. MCKENNEY, CLERK

Supreme Court of the United States.

I. WOOLF, PLAINTIFF IN ERROR,

vs.

CLAUDE HAMILTON *et. al.*, TRUSTEES, &c.,
DEFENDANTS IN ERROR.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS AND ARGUMENT FOR PLAINTIFF IN ERROR.

of the Mammoth Copperopolis of Utah (Limited), defendants and appellants therein, there was rendered against said plaintiff and respondent a judgement; and said plaintiff and respondent having
181 obtained a writ of error and filed a copy thereof with the clerk of said court to reverse the judgement in the aforesaid suit, and a citation directed to the said defendants and appellants, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if said plaintiff in said writ of error shall prosecute the same to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES POPPER. [SEAL.]
EMAN'L KAHN. [SEAL.]

Sealed and delivered in presence of—
T. A. McBRIDE.

TERRITORY OF UTAH,
Salt Lake County, ss:

I, E. T. Sprague, clerk of the supreme court of the Territory of Utah, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

E. T. SPRAGUE, *Clerk.*

(Endorsed:) Filed 6th Oct., 1879. E. T. Sprague, clerk.

182 TERRITORY OF UTAH.
Salt Lake County, ss:

I, E. T. Sprague, clerk of the supreme court of Utah Territory, in obedience to the writ of error attached hereto, do herewith return to the Supreme Court of the United States said original writ, the citation issued thereon, with proof of service thereof, and a transcript of the records and proceedings in and of said supreme court of said Territory in the cause in said writ mentioned; also of the opinion of said last-named court therein and of bond on said writ; and I hereby certify that said transcript of the record and proceedings, or said of said opinion and bond, is a full, true, correct, and complete copy of the several originals thereof and endorsements thereon, on file or of record in my office.

In witness whereof I have hereunto set my hand and the seal of said supreme court of Utah Territory, at Salt Lake City, this 6th day of October, A. D. 1879.

[SEAL.]

E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

(Indorsement on cover:) No. 129. Isaac Woolf, plaintiff in error, vs. Claud Hamilton (commonly called Lord Claud Hamilton) and John Elliott, trustees of the first and second debenture bondolders of The Mammoth Copperopolis of Utah (Limited). Utah Terr'y sup. court. Filed 15 November, 1879.

108-B

Supreme Court of the United States.

I. WOOLF, PLAINTIFF IN ERROR,

vs.

CLAUDE HAMILTON *et. al.*, TRUSTEES, &c.,
DEFENDANTS IN ERROR.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS AND ARGUMENT FOR PLAINTIFF IN ERROR.

1 SUPREME COURT OF THE UNITED STATES.

ISAAC WOOLF, Plaintiff in Error,
vs.
CLAUDE HAMILTON *et al.*, trustees etc.
Defendants in Error.

STATEMENT OF CASE, ASSIGNMENT OF ERRORS AND ARGUMENT FOR PLAINTIFF IN ERROR.

This case is similar to the case of Kahn Brothers *vs.* Lord Claude Hamilton *et al.*, trustees, and in the court below, one ruling disposed of both cases.

The evidence was not altogether identical and on trial they were separated in argument though their final disposition in this court will probably turn upon the same questions—so we pray the court to consider them together, and apply the argument to either case, as it may seem to apply properly. The first cause of action is upon an account stated between the plaintiff and the defendants for the sum of $1,420.60, for moneys paid,
2 laid out and expended by plaintiff at defendant's request.

The second cause of action is for the services of one Charles William Cook, as the agent and attorney of the defendants at the rate of $200 per month—the alleged value of the services—the aggregate amounting to $1,600—with a credit of $100 thereon—leaving a balance of $1,500—on assignment of the plaintiffs before the commencement of suit, etc.—with prayer for judgment.

The answer of the defendants admits that they are
3 trustees as alleged, and alleges the motive, purposes and limitations of their trust.

In answer to the first cause of action they deny that at the time stated they were indebted as alleged to the plaintiff, or that any account was stated between them; and deny that at any time there ever was any dealings between them to furnish the basis of an accounting.

As to the second cause of action, the defendants deny that said Cook performed the services alleged as their agent or attorney, or that they agreed to pay therefor the sum alleged or any sum.

The defendants further answer in respect to said claim for services, that said Cook had ample authority from the corporation, but only special and limited authority from the defendants as trustees, and had no authority to create any liability against
4 the defendants as such.

A jury was waived by consent, and the action was tried by the District Court of the Third Judicial District of Utah,

The court found:

1st. That the defendants were at the date of the accruing of the liabilities sued on, trustees of the debentures, bondholders of said company as alleged, and that the deed of the property of the corporation was made to them August 19th, 1873, and recorded in the county records of Juab County, Utah, October 17, 1873.

2d. That the defendants as such trustees entered into the possession of the property under said deed, and own and hold the legal title thereto.

3d. That on the 1st of January, 1876, the defendants, trustees, etc., were indebted to the plaintiff on an account for moneys advanced and paid out for their use in the sum claimed in the first cause of action, and that no part of it has ever been paid.

4th. That the defendants were indebted to Charles
5 Wm. Cook for services by him rendered to them as their agent, etc., from December, 1875, to the first day of August, 1876, in the amount claimed in the second cause of action, and that the sum was due and unpaid and that said claim had been duly assigned to plaintiff before suit brought—and that plaintiff was the owner, and it was unpaid—and judgment was rendered accordingly.

The defendants excepted to these findings, on the following grounds:

1st. To the second finding of fact that it is not supported by the evidence—and that the finding to the effect that the defendants held the legal title, ~~now~~ was a conclusion of law, and not sustained by the facts. That the deed was only a mortgage in effect, and conveyed no title without a foreclosure and sale.

2d. To the third finding, because no dealings between the plaintiff and the defendants were shown as a predicate for
7 an account stated, nor that any money had been advanced as found by the court. Nor that any balance in precise sum was ever agreed upon between plaintiff and said defendants' alleged agent, till July 15, 1876, when the agency ceased—and because the claim was made up of debts of the Mammoth Mining Company, bought up by plaintiff with moneys advanced him by the agent out of funds derived from another trust, which debts were not chargeable to the trustees and could not be made so by said agent.

3d. To the fourth finding, because the evidence failed to show that Cook rendered any services to the trustees of the first deed, but that it does show that he was provided with funds from a different source to settle the old debts of the Company and Mine with any balance. And that Cook exceeded his authority and

rendered no beneficial services to the defendants or trustees of the first debenture holders.

And except to the conclusion of law found that in their
7 capacity as trustees, etc., the defendants are indebted to the plaintiff as found. Because neither said agent nor the defendants had any authority to burden their trust with the plaintiff's claims, and the attempt to do so is a breach of trust.

A statement of the evidence is in the record and grounds for a new trial was set forth therein, including the foregoing, together with certain exceptions to the rulings of the court in the admission of evidence.

The motion for new trial having been overruled, the case was taken by appeal to the Supreme Court of the Territory, in an appeal from the judgment and order denying the motion for a new trial, which is the method provided for reviewing all cases in the Territorial Supreme Court.

The Supreme Court, for the reasons given in the opinion filed in the case of Kahn Brothers vs. these defendants, reversed the judgment of the District Court and dismissed the action.

From this judgment the case comes to this court for
8 revision; and the plaintiff in error

ASSIGNS ON THIS RECORD THE FOLLOWING ERRORS:

1st. That the court erred in reversing the judgment of the court below.

2d. That the court erred in entering a final judgment against the plaintiffs in the Supreme Court; because its judgment being based upon the evidence in the record, no final judgment could be rendered, except upon a finding of facts, and no such finding is made by the court.

3d. There is no finding of facts to support the judgment.

4th. On the facts found and in the record the judgment of the District Court should have been affirmed.

9 ARGUMENT.

The argument involves the exceptions to the rulings and decisions of the District Court, and the first objection taken in the record was to the second finding.

That finding was to the effect that the defendants before the accruing of the liabilities sued on herein, entered into the possession of the property of the Mining Company, under their deed of August 19th, 1873, (See Exhibit D, page 48 of Record,) and that they now own and ever since said conveyance, have owned and held the legal title to said property.

As to the correctness of their finding the result must be determined by an inspection of the deed itself in the record.

The difference between a trust deed which conveys to the

grantee the legal title and a mortgage which creates only a lien upon property is now too well understood to require any general argument.

10 This was a deed authorizing the grantees to take possession and use the property and providing for a sale and conveyance by the grantees.

Section 1485 of the Compiled Laws of Utah:

"That a mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession without a foreclosure and sale," has no application to cases of this kind. Whatever may be the equitable rights of the grantor, in a trust deed conveying the possession and the estate, with a power of sale in the grantee, there is no question that it does convey the *legal title*. And the California authorities, from which State the Utah Statute was copied, are entirely clear in the question.

Koch vs. Briggs, 14 Cal. 256.
Barr vs. Schroeder, 32 Cal. 609.
11 Green vs. Butler, 26 Cal. 595.
Grant vs. Burr, 54 Cal. 298.
Preston vs. Sonora Lode, 39 Cal. 116.
Fuquay vs. Stickney, 41 Cal. 587.
Moon vs. Lessee of Burnett, 11 Ohio 334.
Morris vs. Way, 16 Ohio 469.

As to the branch of this exception which denies that the proof showed the defendants went into the possession under that deed, the testimony of the agent Cook, (Page 28 et seq. of Transcript) is direct and positive. He says: "I obtained and took possession of the property for the first trustees of the debenture holders about the 4th of August, 1875." And then in October afterwards, leased it, and subsequently the trustees made direct arrangements with the lessee. (Clohecy.)

But to close all doubt in that question Clohecy testifies that these defendants and other directors of the Company, told him in London in the spring of 1876, that the Company had no right in the property - "*that it was in the hands of the trustees*
12 (these defendants) for the debenture holders," "My dealings were with Lord Claud Hamilton and John Elliot *as trustees*. I always understood I was dealing with the trustees, &c." (Page 36 of Transcript.) *Clohecy's testimony.*

The second exception is to the third finding, because there was no evidence that there had been any dealings between the plaintiff and defendants to make a predicate for an account stated.

A brief statement of the facts will suffice to show the superficial character of this exception.

The Mammoth Copperopolis Mining Company had become embarrassed into debts in Utah, and it had by a conveyance of its property to parties, sought to raise funds to pay those debts.

Trustees

The amount raised, having proved insufficient, the persons who had made the first advance proposed to raise more money and place it in the same hands under the same security for
13 the purpose, and enable the trustees under the deed to get possession and work the mines. To do this the old debts of the Company had to be got in, as they consisted of liens, judgments, etc., as claims, that as against a foreign corporation, furnished grounds of attachment, and until they were settled there could be practically nothing accomplished in the way of working the mine. Cook was furnished with power of attorney, as agent of the Company, and with power of attorney as agent of the defendants as trustees in two capacities. 1st.—Of the debenture holders—and 2nd—Of the debenture funds subscribed by these bondholders, and designed, if it exceeded the amount of first debentures provided for, as a basis for a second issue of debentures. These different powers were simply designed to clothe him with the necessary authority to get in the debts of the Company legally, so that the trustees could take the prop-
14 erty for the uses of the trust—for the debenture holders. The central and main purpose of Cook's coming, was to obtain possession of the property for the trustees, and his being armed with authority in other directions, was in aid of this prime purpose. Even the most careless perusal of this record will make this apparent.

These trustees were just as much interested legally in getting the old debts of the Company settled up, as that Company could be, in fact these trustees were "without occupation" unless that could be done, and they set diligently to work by their agent to do it. The deed from Wadsworth, Wells, Fargo & Co.'s agent, of August, 1875, by which they now claim an independent title to the mine, was obtained by paying a judgment of the grantors against the Mining Company—and was as subject to the objection stated, as this transaction with Woolf. They sent their agent to settle these identical debts, with others, and he entered upon his duty as one who understood what it contemplated. The de-
15 fendants have had the entire benefit of the transaction, the debts were retired, the possession of the mine obtained, and the fruits of the contract enjoyed—and now because the agent had a power of attorney from the Company, his acts for the "trustees" are to be repudiated.

The court below held that as the agent represented different characters, and the testimony did not disclose in which one he acted on particular occasions, the parties dealing with him had the right to charge him in either or all.

Woolf was employed in pursuance of the plan to get in certain of the debts of the Company, to buy up as he could claims, checks and accounts, and as he did so he was credited in a schedule with them, his contract being at a given rate or per cent. The account was there stated and the pretense that there was no dealing, is

based on the legal notion that everywhere runs through the defendants' theory that Cook had *no power* to have any *such*
16 dealings with the plaintiff.

So in dealing with the third and last of these exceptions we will come to the defendants' real defense and the ground upon which the majority of the Utah Supreme Court decided the case.

The third formal exception is but part of the preceding one, and will be met by the evidence in the record, and the answer to the last exception of the series.

The final exception at the close contains the substance of all that precedes it, and we proceed to consider it accordingly.

This exception attacks the contracts made by Cook, on two grounds:

1st.—A want of power in Cook as agent of defendants.

This suggestion is met, first, by Cook's power of attorney—they are full in every respect and have upon their face evidence of the completeness of the power with which he was in-
17 tended to be invested.

But what conclusively we think binds the defendants in this case, is that all these contracts are but the balance and completion of contracts, of which in reality, they are but a part. The testimony shows, that a percentage on these same accounts was paid by Cook for the trustees, and they made no question of power or authority there. The account sued on, is merely *the balance* of a long course of dealing, involving necessarily the sanction of the trustees. They suddenly discover after paying out thousands of dollars and accepting the old accounts of the company, that Cook is without power to do these things.

If they are to repudiate the latter part of the contract why did they not tender back, and rescind what preceded? They seem not to entertain any doubt of Cook's authority until their darling purpose of getting the property into actual possession is accom-
18 plished by his acts, and having done that they propose to kick the ladder from under them, by which they climbed into position. Good faith alone requires that having enjoyed the fruits of their agent's acts, and kept them, they shall be held bound to all that was done as part of the scheme.

The "instruction" of the trustees to Cook, on page 61 of the transcript, to the effect, "Should you be unable to carry out these instructions (having reference to the purchase of claims against the Company) *in the terms, and in the manner* above directed, or any of them, then you are *hereby instructed and directed* to arrange the affairs *for us*, as *near thereto as circumstances* will permit."

Further discussion of Cook's authority would seem unnecessary.

There yet remains the question of the authority of the trustees themselves, which seems to be the final subterfuge of the defendants in this action.

It is said that the trustees are bound by the limitations
19 of their trust, that persons dealing with them must take notice of those limitations, and if those contracts were made by their procuration, and ratified fully they are still not binding—because they involve, it is said, a "*breach of trust.*"

While these trustees were taking up the debts of t
by paying 25 per cent. of their face in cash, and
obligations for 25 per cent. more on time, and holding
edness against the company for its full face; while they were thus procuring possession of the mine, with the prospect of large profits from its working, their consciences were undisturbed—while the benefits were in prospect rather than in enjoyment, conscience slept, but once *in possession of the mine* and the *company's debts assigned to them*, conscience is aroused. The trustees discover, not a want of power to take up the debts and accept an assignment, not a want of power to go into possession and enjoy the use and profits of the mine, but a want of power to *pay for these* benefits! And this awakened conscience does not lead the penitents to restore what they had already received, but strangely enough, only applies to so much of the transaction as requires the most faithful trustees to complete payment of a small balance on benefits already received!

The pretense of a want of power by the trustees is so evidently a device to avoid a payment actually agreed upon, that it does not invite favor at the hands of a judicial tribunal. It should appear to be real and not feigned.

Counsel for defendants insisted that it would be a breach of trust to buy in the debts of the Company with trust funds raised by outside parties. But the answer is that it would be a
21 breach of trust not to do so if it were for the benefit of the trust, and that was what the trustees were there to decide. A contract could not be so made that if it were fortunate it would be binding, and if it turned out unfortunately it would be invalid. Contracts do not depend for their validity upon their being successful ventures for one or the other, or for both of the parties.

If, in the discharge of their trust, and for the better enjoyment of its benefits, they ~~seen~~ saw proper, they could encumber it at any time, subject to the right of a court of equity to determine upon the exercise of a reasonable discretion of their beneficiaries. The conveyance of the legal title to them is designed for the purpose of empowering them to manage the estate in the way most beneficial —to free it from the restrictions, and clothe them with authority that a mere lienholder could not exercise.

There is conclusive evidence of bad faith in the record of this case on the part of these defendants.

While they are striving to get in all the claims that would interfere with their enjoyment of the property, they are claiming to be actuated by considerations going to the protection of the rights of the debenture holders—their agent supposing, in the innocence of his honest purposes, that that was what he was sent here to do, so states the fact, freely and frankly; but they no sooner attain their object, than with an utter disregard of all their former professions, and of their duties as trustees, to their beneficiaries, they throw off the disguise and announce themselves absolute owners of the property by an independent title purchased for some "guarantors," (of which *they* were a part) of Wells, Fargo & Co., in August, 1875. A grosser breach of trust than this was, against their beneficiaries, never was brought to view, and yet these same

23 immaculate trustees profess horror at an act which simply called upon them to complete a contract made in good faith, enuring to the benefit of their beneficiaries, as a possible excess of power.

This pretense is too shallow to affect the judicial mind.

They are clothed with the legal title to mining property, they are authorized to enter into the possession, to work it. hold it, or sell it, and convey a good title, and the very language of their authority. relieves the purchaser from any necessity of investigating the facts as to the exercise of their power of sale, (See folio 106 page 49 Transcript.) and it is idle, it seems to us, to contend that vested with this power, they could not clear away all petty local claims against this property that might interfere either with their possession and enjoyment, or a sale of the property pursuant to their power. The statement of such a proposition furnishes the answer

The vital error of this whole defense is in treating the deed of trust as a mere lien—that error eliminated from the case,

24 the other propositions of defendant fall with it.

In conclusion, we urge that this case must be reversed on all the grounds assigned, and that the judgment of the District Court of the Third Judicial District, should be affirmed.

The other errors assigned are submitted in the argument on the same points in the case of Kahn Bros against these defendants.

Jno R. McBride,
Atty for Plff in Error.

108-15

SUPREME COURT U.S.
FILED
OCT 13 1883
JAMES H. McKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

NO......

ISAAC WOOLF, Plaintiff in Error,

vs.

LORD CLAUD HAMILTON, and JOHN ELLIOTT, "*Trustees for the holders of the first debenture bonds of the Mammoth Copperopolis of Utah, (Limited.)*" Defendants in Error.

Brief for Defendants in Error.

SAMUEL A. MERRITT,
For Defendants in Error.
JNO. R. McBRIDE,
For Plaintiffs in Error.

J. C. GRAHAM & CO., PRINTERS, SALT LAKE CITY.

SUPREME COURT OF THE UNITED STATES.

ISAAC WOOLF, Plaintiff in Error,

vs.

LORD CLAUDE HAMILTON and JOHN ELLIOTT, Trustees for the holders of First Debentures, &c. } Defendants in Error.

ERROR TO THE SUPREME COURT OF UTAH TERRITORY.

STATEMENT OF CASE.

Facts:—The main facts of this case are the same as those in the prior case of Samuel Kahn, et al., against the same defendants, except certain facts peculiar to the plaintiff's claims in this case and except also that it is sought to charge the defendants only in one fiduciary capacity.

The evidence embodied in the record shows the same three trusts, in each of which the defendants were appointed trustees.

The first arose in 1873; the Mammoth Copperopolis of Utah (Limited), an English mining corporation, (hereinafter called the "Company") in August of that year, borrowed about £20,000 on its debentures delivered to the lenders or subscribers to such loan, in sums of £10 each, and, at the same time, for the purpose of securing the payment of these debentures to the holders, executed a trust mortgage, or deed of trust of its mine and other property, (Exhibit D printed transcript, page 48) to the defendants as trustees with power of sale; on default, and upon the notice and request prescribed. The sole purpose of this trust was to secure the payment of the debentures and interest. The instrument prescribes fully the powers and duties of the trustees, the mode of execution of the trust. and the rights of the beneficiaries; and guaranteed the said debentures should be a first charge on the premises. The instrument was duly recorded. The debentures remain outstanding, and the trust has not been executed by a sale of the premises, but is still pending.

The money thus borrowed was applied to the proposed pur-

poses of the Company. In the following year, 1874, the Company again become embarrassed in its business in Utah, and was sued for debt by a number of its creditors, the first of whom was Wells, Fargo & Co., which suits went to judgment against the Company.

In order to relieve its property and business from these new embarrassments, the Company took measures to raise further funds, and from this proceeding, a second trust arose.

The further fund was not delivered to the Company or put at its disposal, but the persons who contributed it, placed it in the hands of the defendants, as their agents or trustees, to be applied in a particular way which would furnish a security, for the time being, to the contributors. The conditions upon which which this fund was raised, and the purpose and mannner of its outlay are fully set forth in the instructions of the agents or trustees so chosen to apply such fund, annexed to their power of attorney to Cook and the written consent of most of the contributors (p. 59-62). This was called the "2nd Debenture Fund" but no 2nd debentures were ever issued, because the fund was misapplied and squandered by the agent, Cook, in collusion with plaintiffs and others, and the plan failed.

The plan adopted was, that the Company, the trustees for the debenture holders, and the agents or trustees for the disbursement of the additional or 2nd Debenture Fund, should each agree upon and appoint an agent to come to Utah to inquire and ascertain the condition of the Company's affairs, and to represent them severally in their various interests. The witness, Cook, was selected as such agent, and three powers of attorney were given to him accordingly, (Exhibits 1, 2 and 3, p. 56-59). By Exhibit 2, Cook was authorized to do all acts "necessary or proper to be done or effected for the purpose of carrying out the business and objects of the 2nd Debenture Trust, "subject only to the written instructions given" to said Cook by the trustees to that fund.

These instructions (Exhibit A p. 59) were delivered to Cook with his powers of attorney; they informed him that the amount of funds subscribed, on conditions, for the 2nd Debenture Fund was about 6,000 pounds; enjoined him to bear in mind that no part of the fund, except for his necessary expenses in America, was to be used or pledged, unless the property of the Company

could be relieved from its difficulties, either by working the mine or by settling the debts, at a sum that would leave 3,000 pounds as a working capital. The results of Cook's inquiries were to be cabled by cyphers prescribed in these instructions, and he was urged to bear in mind that his "mission was one of inquiry, and you are not to pay one penny until you satisfy us that the whole matter can be settled."

The "conditions" under which the trustees of the 2nd Debenture Fnnd received such fund referred to in, and delivered to Cook with said instructions, disclose fully the purposes for which the contributors subscribed it, and the manner in which it was to be used. They were printed and are signed by a portion of the contributors who had subscribed to the fund at the time the powers of attorney were made, and were delivered to Cook with them. These conditions are as follows:

"Whereas a certain sum of money has been subscribed and promised for the purpose of being used to relieve the Mammoth Copperopolis of Utah Company from its present embarrassments and to obtain possession of and work the mine until the Company are in a position to issue 2nd debenture bonds, as have been proposed; it is now suggested that the money referred to above shall be placed in the hands of Lord Claude Hamilton and John Elliott, as trustees, under the following arrangements, proposed to be carried out:

"1st. That the trustees of the first debenture holders give authority to to represent them at Salt Lake, under the instructions, to protect the interests of the debenture holders under the first mortgage deed.

"2nd. The subscribers to the proposed second issue of debentures, authorize the trustees to use the money subscribed for the following purposes:

A. To purchase the claims and judgment of Wells, Fargo & Co., upon such terms as may be agreed,

B. To purchase and take an assignment of all liens existing upon the Company's property.

C. To use the balance of any money remaining in the fund in working the mine under an arrangement that the Company lease the mine, etc., to the trustees, as hereinafter set forth, subject to existing mortgage claims.

"3rd. That the Company lease the mine and all the property of the Company to the trustees on the following conditions:

A. That the trustees advance money sufficient to enable them to obtain possession of the mine, and work the same under the lease, by taking position of the parties at present holding liens upon the property.

B. That an agent be mutually agreed upon by the Company and the trustees.

C. That regular accounts of all receipts and expenditures by the agent be properly kept, and monthly returns forwarded reg- regularly to the trustees and the Company.

D. That the profits derived from working the property be applied, 1st. To any claims that may be due under the arrangement to Wells, Fargo & Co., for the purchase of their judgment; 2nd. To the payment of interest on the first debenture bonds; 3rd. to the payment of interest on the amount of money subscribed towards the proposed second issue of debenture bonds.

"The lease to contain a condition that as soon as the Company can show that they are in a position to execute a second mortgage upon the property and issue the proposed second debentures, the trustees will assign to the Company all claims and judgments and other demands that may have been made, purchased and obtained by them, and hand over, free from the lease, to the Company, the full control and management of the property, taking debentures for the amount, which debentures are to be distributed to the persons entitled thereto, according to their subscription.

"By the above arrangement, it will be seen that the trustees, for the time being, will take the place of the judgment creditors against the property of the Company, and in fact hold, as security for the money entrusted to them, a lien on the whole of the Compauy's property, subject only to the first mortgage deed, and which which will continue to be the case until the Company is in a position to execute a second mortgage deed, also at the same time work at the mine will be continued on.

"We, the undersigned, consent to the amount of our subscription being used by the trustees only for the purposes and on the conditions hereinbefore stated."

Before leaving London to carry out this plan, Cook wrote

the letter (Ex. C. p. 62) to defendant Hamilton, in which he promises to act "strictly within such instructions, and so as in all things to protect you in what I may do thereunder from personal liabilities, *looking to anything that I may do to the funds*, and not to you personally."

On the next day, Cook wrote a further note (Ex. D. p. 63) to the same Defendant in which he says, "I fully understand and admit that my mission is one of inquiry, not for immediate payment of outstanding liabilities; that I pledge myself not to undertake any payments, except as a part of a general scheme for the whole liabilities of the Company in America."

Cook arrived in Utah, in August, 1874; soon after he arrived, Wells, Fargo & Co. sold the property of the Company on their judgment, Walsworth, their agent, being purchaser at the the sheriff's sale; Cook did'not redeem from this sale but, it matured into a sheriff's deed.

Meantime, instead of purchasing judgments, liens &c. against the Company and taking assignment of them to the trustees of the fund contributed for that purpose, Cook made arrangements to *pay* some of the judgment creditors, out of this fund, the whole of their claims, and to others 50 per cent. of their claims, and actually paid over to them one-half of sums agreed upon, giving notes for the balance.

With the plaintiff, who was dealing in accounts, time-checks and other unsecured bills of the Company, he made an absolute agreement to *pay* him 50 cents on the dollar on all accounts he held, and all such as he would purchase, against the Company, without regard to the rates at which he should have purchased, advanced to him, "provisionally" $600 out of "the second debenture fund," and paid his expenses in travelling about the country for that purpose. (p.23.)

The claim for $1420.60 sued on is for the aggregate of accounts against the Company so bought up by plaintiff. Cook's powers were revoked on the 23d of June 1876 (p. 20), after which he went to plaintiff, on the 16th of July 1876, and stated an account in order to ascertain how much plaintiff should sue for (p. 21). *Plaintiff still holds all these accounts against the Company* (p. 32, 44.)

In ignorance of the true condition of its affairs in Utah, and

believing that the only obstacle in the way of saving the Company's property, was the sale to Wadsworth, friends of the Company in England guaranteed and paid to Wells, Fargo & Co.'s agent the greater portion of the money for a repurchase of the property, the balance being paid out of the second debenture fund, and a conveyance (Ex. F. p. 70) was made to Hamilton & Elliott in trust.

Cook entered into possession of the mine under this deed, made a sham lease of it and worked it, expending, in such work, a portion of the second debenture fund and a large amount of materials on hand, and borrowed more money for that purpose, at a total loss. He then made a lease of the mine to Clohecy, without authority, and claims that he rendered services under this lease, for the trustees for the debenture holders, from December 1st, 1875 to August 1st, 1876. These services consisted in waiting and watching for royalties from the mine, but in vain, except for the sum of $100 so received which he credited as paid by the trustees in his claim for $1600. He assigned this claim to plaintiff; this is plaintiff's second claim, and Cook was the chief witness to prove it.

Proceedings.—The District Court made findings (p. 4,) and rendered judgment for plaintiffs on both causes; the defendant took exceptions to the rulings of the Court admitting testimony, and to the findings of the Court, and embodied these exceptions (p. 6) with specification of errors (p. 71) in a statement on motion for a new trial. Such motion for a new trial was denied; defendant appealed to the Territorial Supreme Court, on a statement of the case, and that Court reversed the judgment of the District Court for the reasons given in the prior and similar case of Kahn Bros. against these defendants as trustees for two of said trust; and the case is brought to this Court by the plaintiff.

POINTS AND AUTHORITIES OF DEFENDANTS IN ERROR.

Neither claim set up in this case pertains to the trust in which defendants are sued, and therefore this action cannot be maintained.

If plaintiff's claims were secured by the trust, or proper charges upon it, he would have to resort to a court of equity for

relief, and therefore this action at law cannot be maintained, and the District Court had no jurisdiction of the subject matter.

The first claim is not the subject of an account stated; it is for debts and accounts against the Company which plaintiff held and still holds. He parted with nothing; no benefit accrued to the trust estate; and he still has his right of action against the Company for these debts in his hands. Besides, no account was stated until after the revocation of Cook's powers and plaintiff knew that fact. This fact is manifest from the testimony of both of them (p. 15, 22, 40,) notwithstanding the coaxing and coaching of counsel, and much paltering equivocation of these two witnesses.

Parties dealing with an agent are bound to enquire and ascertain the extent of that agent's powers; and when that agent is acting, or assuming to act, for a trustee, all parties dealing with him as such are bound to take notice of the trust, as well as the powers and duties of the trustee, and the rights of the beneficiaries, and they are charged with notice of all these. The trust in this case concerned lands, and the instrument creating it being of record imparted notice to all the world.

But plaintiff never dealt with the trustees for the debenture holders, nor with Cook, as their agent. He and Cook were engaged in manipulating the 2nd "debenture fund," which pertained to a different trust, and therefore plaintiff was dealing with Cook solely as agent for the trustees of this fund, and these dealings were in gross perversion of that trust, at that.

An inspection of Cook's powers and instructions in respect to the "2nd debenture fund," were accessible to plaintiff (and dealing with an agent he was bound to inquire) would have informed plaintiff that the agent's power did not authorize him to expend that fund in paying debts of the Company, but required him, in certain contingencies, to purchase and take assignments to the trustees of that fund for the present security of those who contributed it, till other security could be substituted. He was bound to know, and did know that he was not dealing with the trusters for the bond holders or their agent, but in fact with those of another trust.

When that fund was squandered by an unfaithful agent, the plaintiff, with his active connivance sought, by shallow devices, the statement in the notes did not create any lien upon the trust

to charge another trust with these debts of the Company, which he bought up on speculation, and which he says (p. 40) he preferred to hold instead of taking such notes or guarantees as Cook gave to other creditors of the Company, as appears in said case of Kahn Bros.

The other claim which was assigned to plaintiff by Cook is equally beyond the scope and purposes of the trust for the debenture holders. It is for his claim for salary or services about ore accounts from Dec. 1st, 1875, until Aug. 1st, 1876.

He was not authorized to work the mine, until all the debts of the Company were bought up with the 2nd debenture fund, and only by means of the surplus of such fund.

The trust deed gives permission to the trustees to work the mine, but this is merely a license, since no fund is therein provided for, but the deed guarantees to the debenture holders, that their bonds shall be a first charge upon the Company's property. The interests of the beneficiaries cannot be charged without their consent, for any expenses about working the mine, or for any other matter beyond the scope and purposes of the trust.

A trustee, acting under a declaration of trust, expending money not authorized by the declarations, is not entitled to reimbursement out of the trust property, unless the expenditure was necessary for the preservation of the property, or to prevent the failure of the designated trust; and a third person advancing money to the trustee stands in no better position with reference to the trust property. If the third person advances the money with the approbation of the grantors in the trust deed, he can only enforce the equitable lien thus obtained against the residenary interest coming to them after all the claims mentioned in the declaration are satisfied. *Beatty* vs. *Clark*, 20 Cal, 11.

In the latter case, the declaration of trust provided for reimbursing to certain persons sums of money which they should severally advance to the trust estate, for certain purposes, one of which was "the purpose of raising a crop on said lands for the present year" (1856). The trustee procured an advancement of money and goods from one Hall to the amount of $14,647.39 for the purposes of the ranch for 1857, and borrowed $16,500 from one Rasen, and the trustee gave his promissory notes to these parties, and pledged the trust property; and it was held that

property; that the objects for which the money was borrowed were not embraced by any of the purposes designated in the declaration of trust.

What right or power had Cook, in the name of the trustees, to charge the trust property in this case with his pretended services pertaining operations on the mine by a lessee, several years after the deed of trust, and not embraced in its purposes?

It is not necessary in this case to discuss the effect of the sale on Wells, Fargo & Co's judgment—whether the same passed any title or equity; nor whether the trust deed to the defendants passed the legal title to the Company's property. Grant that the latter did pass the legal title; the fact would give no right or power to charge the estate with plaintiff's claims, and no remedy at law to be enforced by judgment and execution; for a mortgagee or trustee, with power of sale, has not such an estate in the land as can be attached or sold for his debts, or for debts created by him and not embraced in the terms of the trust. *Eaton* vs *Whiting*, 3 Pick., 490.

There was no necessity for findings by the Territorial Supreme Court, on reversal of the judgment of the District. The whole case was before the Court upon a statement, and the judgment was final, upon the merits. If findings were necessary, the Supreme Court found sufficient to sustain the judgment, when it found, as in this and the other case before it, that the claims sued on were not embraced within, or provided for by the declaration of trust.

Sec. 2. of the Act of Congress, of April 7, 1874, concerning the practice in Territorial Courts, applies only to equity cases. In cases at law, the statement and specifications are, in effect, a bill of exceptions, and goes up with the record, with all the evidence embodied in the statement; whereas, in appeals to this court, from the Territorial Courts, it is provided by that act, that "instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict &c" shall be certified up.

This case might be considered with the prior case of Kahn Bros. vs these defendants as trustees, and is governed by the same general principles.

SAMUEL A. MERRITT,
For defts. in error.